GRAHAM), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 740, 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. 741

At the request of Mr. SESSIONS, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 741, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 757

At the request of Mr. CHAMBLISS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 757, a bill entitled the ''Guard and Reserve Commanders Pay Equity Act''.

S. 760

At the request of Mr. GRASSLEY, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Louisiana (Ms. LANDRIEU), the Senator from South Dakota (Mr. DASCHLE) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 760, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 783

At the request of Mr. CHAMBLISS, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 783, a bill to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

S. 816

At the request of Mr. CONRAD, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided by hospitals in rural areas, and for other purposes.

S. 822

At the request of Mr. KERRY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 822, a bill to create a 3-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

S. 832

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 832, a bill to provide that bonuses and other extraordinary or excessive compensation of corporate insiders and wrongdoers may be included in the bankruptcy estate.

S. 837

At the request of Mr. BROWNBACK, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 837, a bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes.

S. 845

At the request of Mr. GRAHAM of Florida, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S.J. RES. 1

At the request of Mr. KYL, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S.J. RES. 8

At the request of Mr. BIDEN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S.J. Res. 8, a joint resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of sexual assault in the United States and supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month.

S.J. RES. 8

At the request of Mr. BROWNBACK, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S.J. Res. 8, supra.

S. RES. 75

At the request of Mr. CAMPBELL, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. Res. 75, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. RES. 82

At the request of Mr. BROWNBACK, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 82, a resolution expressing the sense of the Senate concerning the continuos repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women.

S. RES. 111

At the request of Mr. HATCH, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Texas (Mrs. HUTCHISON), the Senator from Colorado (Mr. ALLARD) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Res. 111, a resolution designating April 30, 2003, as ''Dia de los Ninos: Celebrating Young Americans'', and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENSIGN (for himself, Mr. BROWNBACK, Mr. INHOFE, Mr. TALENT, Mr. SANTORUM, Mr. GRASSLEY, Mr. ENZI, Mr. SESSIONS, Mr. ALLEN, Mr. BUNNING, Mr. FITZGERALD, Mr. CHAMBLISS, Mr. DEWINE, Mr. MCCONNELL, Mr. COLEMAN, Mr. KYL, Mr. NICKLES, Mr. GRAHAM of South Carolina, Mr. BOND, Mr. HAGEL, Mr. CRAIG, Mr. MCCAIN, and Mr. HATCH):

S. 851. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

Mr. ENSIGN. Mr. President, I rise to introduce the Child Custody Protection Act. This legislation makes it a Federal offense to knowingly transport a minor across a State line, with the intent that she obtain an abortion, in circumvention of a State's parental consent or parental notification law.

I have three young children in school, including a daughter, so I know something about parental consent. My wife and I, like most parents, have to give our written consent for school activities all the time.

In most schools, an underage child can't go on a school field trip without a signed permission slip. An underage child also can't receive mild medication at school, such as aspirin, for the alleviation of pain or discomfort unless a parent signs a release form permitting the school nurse to administer it. In some schools, a child may not take sex education class without parental consent. Nothing, however, prevents this same child from being taken across State lines, in direct disobedience of State laws, for the purpose of undergoing a life-altering abortion.

The Child Custody Protection Act simply attempts to strengthen the effectiveness of State laws designed to protect children from the health and safety risks associated with abortion. In many cases, only a girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or the release of pertinent data from family physicians. When a pregnant girl is taken to have an abortion without her parents' knowledge, none of these precautions can be taken. The harsh reality is that leaving parents uniformed about their underage daughter's abortion may not only be detrimental to the physical and mental health of the child but may, in some instances, be fatal.

This legislation does not supercede, override, or in any way alter existing State parental involvement laws. It does not impose any parental notice or consent requirement on any State. The Child Custody Protection Act addresses the interstate transportation of minors in order to circumvent valid, existing state laws and uses the authority of Congress to regulate interstate activity to protect those laws from evasion.

Currently, forty-three States have laws requiring a minor to get the consent of or notify one or both parents prior to an abortion, but only thirty-three are enforcing those measures. Most of the statutes apply to a child under the age of 18 and provide for a court bypass procedure should she be unable to involve her parents.

This legislation is a common sense solution to a dire problem. A minor who is forbidden to drink alcohol, to stay out past a certain hour, or to drive a car in some states is certainly not prepared to make a life-altering, hazardous decision, such as an abortion, without the consultation or consent of at least one parent.

In fact, a poll found that 85 percent of voters, including 75 percent of ''pro-choice'' voters, said ''No'' when asked, ''Should a person be able to take a minor girl across State lines to obtain an abortion without her parents' knowledge?''

I would like to thank the original cosponsors of this bill for their support, Senators BROWNBACK, INHOFE, TALENT, SANTORUM, GRASSLEY, ENZI, SESSIONS, ALLEN, BUNNING, FITZGERALD, CHAMBLISS, DEWINE, MCCONNELL, COLEMAN, KYL, NICKLES, LINDSEY GRAHAM, BOND, HAGEL, CRAIG, MCCAIN and HATCH. I look forward to working with them, and other members of the Senate, to ensure that underage girls are protected from unscrupulous individuals who want them to make a life-altering decision without parental involvement.

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. 851

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Custody Protection Act''.

SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 117 the following:

''CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION

''Sec.
''2431. Transportation of minors in circumvention of certain laws relating to abortion.

''§ 2431. Transportation of minors in circumvention of certain laws relating to abortion

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

''(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the minor, in a State other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.

''(b) EXCEPTIONS.—

''(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

''(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

''(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the minor or other compelling facts, that before the minor obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides.

''(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

''(e) DEFINITIONS.—For the purposes of this section—

''(1) a 'law requiring parental involvement in a minor's abortion decision' means a law—

''(A) requiring, before an abortion is performed on a minor, either—

''(i) the notification to, or consent of, a parent of that minor; or

''(ii) proceedings in a State court; and

''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

''(2) the term 'parent' means—

''(A) a parent or guardian;

''(B) a legal custodian; or

''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides,

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

''(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision; and

''(4) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

''117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431''.

Mr. HATCH. Mr. President, I rise today to join with my colleagues in introducing the Child Custody Protection Act and express my strong support for this important piece of legislation. Similar legislation was previously introduced in past sessions of Congress but, and I am sad to say, never was signed into law. However, I hope that today is the beginning of a new day to help protect the health and safety of children while safeguarding the rights and responsibilities of parents.

This bill is a reasonable effort to build upon two basic points with which many agree—despite other long-standing differences. The first is the desirability of parental involvement in a minor's abortion decision, and the other is the need to protect a pregnant minor's physical health.

This bill does not supersede, override, or in any way alter existing State parental consent or notification laws. Nor does this bill require States to implement their own parental involvement laws. The Child Custody Protection Act simply makes it a Federal offense to knowingly transport a female minor across a state line, with the intent that she obtain an abortion, in circumvention of State laws requiring parental consent or notification.

This bill, I would emphasize, is not a Federal parental involvement law; it merely ensures that State laws are not evaded through interstate activity. The Federal Government is not trying to tell the States how they must act and when, and this bill is not forcing parents to be good parents. This legislation strengthens the effectiveness of State laws, which is where the issue is best addressed and enforced. If we fail to pass this bill, we would be choosing to ignore the legitimacy and constitutionality of States to create and pass laws that specifically address the needs and desires of its citizens, especially when it comes to the health and safety of children.

The Child Custody Protection Act is a reasonable and rational approach to fixing a serious problem. In most places, a school nurse cannot provide an aspirin to a student for a headache without permission from the parent. Students cannot go on field trips without parental approval. Some report cards need a parent's signature to verify the parent knows how their child is performing academically.

This bill is not addressing something relatively trivial; it is drawing attention to a very serious medical procedure and protecting the health and safety of young girls. States that choose to implement parental notification laws because of their concerns with the well-being and safety of children should have every tool necessary to enforce their own laws.

An abortion is a risky medical procedure, especially for young teenagers. This bill is designed to protect children from the health and safety risks associated with abortion. In many cases, only a young girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Many other medical procedures in this country require the

consent of parents before they are performed. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or even release important information from family physicians. Given all of these other important medical situations that require parental consent, it is only reasonable and logical to recognize and enforce a States law asking for parental consent or notification for certain abortions.

We all know how contentious the issue of abortion can get around here, and across the country. But this matter is not really even about abortion. This bill is simply about protecting the health and safety of minor children and the rights that their own States have concluded their parents should have.

I would urge all of my colleagues to support this legislation and prevent circumvention of State laws, especially when the health and safety of children is involved.

By Mr. DEWINE (for himself, Mr. DASCHLE, Mr. SMITH, and Mr. LEAHY):

S. 852. A bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. DASCHLE. Mr. President, today I join with a bipartisan group of colleagues from the Senate Guard Caucus to introduce the National Guard and Reserve Comprehensive Health Benefits Act of 2003. This bill will allow reservists and their families to receive health coverage through Tricare by paying a modest premium.

These dedicated men and women deserve a better benefit package, given the dramatic expansion of their role within our military. Indeed, there is concern that the high rate of mobilizations—which no one expects to abate—will erode this force's ability to recruit and retain top-notch personnel. South Dakota Guard leaders tell me this bill would be perhaps the most powerful tool we could give them for recruiting and retention. By providing access to quality affordable health care for reservists and their families, this bill will also ensure that when they are mobilized, they are healthy and ready to go.

As I stand before you today, nearly 2,000 members of South Dakota's Guard and Reserves are deployed throughout the world—from force-protection missions at home to assignments in Europe and the Persian Gulf. Most of these reservists will be mobilized for 6 months, and some will stay activated for up to 2 years. And while South Dakota has one of the highest per-capita mobilization rates in the country, it is not unique. As the U.S. role as an international leader evolves, the National Guard and Reserves are being called upon at unprecedented rates to bolster our Nation's defense.

Indeed, since the 1991 gulf war, and particularly since the terrorists attacks of September 11, the demands on Reserve and Guard units have increased steadily. Not only are more reservists deployed more often, they are also activated for increasingly diverse tasks. Historically, this force has helped address a wide variety of social needs—from enforcing civil rights laws to fighting forest fires—and homeland defense is shaping us a major new duty that will require its sustained engagement.

While the demands we place on reservists have grown markedly in the last decade, the Federal Government's commitment to this dedicated group of men and women has not kept pace. In fact, the basic pay and benefit structure that was established during the cold war—when reservists could see their entire career pass by without being activated—remains in place today. As a result, leaders of the National Guard and Reserves are increasingly worried about their ability to recruit and retain new members.

The legislation we are introducing today takes a major step toward providing the men and women of our Reserve components with the support they need to carry out their new, vital role in the total force structure. It will offer Reserve and National Guard members the opportunity to participate for themselves and their family members in the same Tricare program available to active-duty service members and their families. Reservists and their families will share the cost of premium payments with the Department of Defense, with the same cost distribution as used in the Federal Employees Health Benefit Plan. This program will help the National Guard and Reserves attract and keep the best and brightest men and women in the Nation.

The National Guard Association of the United States reports that the average cost of a family health care plan through a civilian HMO is $7,541 per year. In contrast, it estimates that the Tricare cost per family is only $5,173 per year, even without the Government sharing any of the cost. With Government cost-sharing, this will be an attractively priced option for securing health coverage.

Beyond recruitment and retention, this program will improve readiness. More than 20 percent of the Ready Reserve—and as much as 40 percent of young enlisted personnel—do not currently have health insurance. Providing access to quality health care during all phases of service can drastically reduce the occurrence of situations in which large portions of a unit are unable to deploy because of medical reasons. Maintaining a healthy force is absolutely essential to maintaining a prepared force.

Our legislation will also reduce the incidence of problems that invariably occur during mobilization, when families leave their private-sector health plan and enter a wholly new plan, Tricare. Last month, I worked with Secretary of Defense Donald Rumsfeld to end a nationwide problem among families of mobilized reservists. Simply put, they were being forced, unfairly and improperly, to join a more expensive Tricare plan. We did solve that problem, but many families had to wait weeks without knowing whether they should try to extend their private coverage or whether they could afford Tricare. That is simply unacceptable. It is the last thing a reservist should have to worry about when preparing, possibly, for deployment to a war zone.

Another challenge for families going through mobilization is learning the Tricare benefit structure and understanding its system for helping those with problems or questions. Again, all this would be eliminated if families could enroll in Tricare before mobilization. If a family believes its employer's civilian plan is superior, they would be free to remain, and, during periods of mobilization, those premiums would be partially subsidized.

We have developed this bill in consultation with leaders of the National Guard and Reserves at the State and National levels. I appreciate their concern for this problem and their work to help develop a solution. In this regard, I would particularly like to acknowledge the efforts and strong support of the South Dakota National Guard, as well as the Military Officers Association of America, the Enlisted Association of the National Guard, the National Guard Association of the United States, the Reserve Officers Association, the Marine Corps Reserve Officers Association, the National Military Family Association, the National Association for Uniformed Services, and the National Military/Veterans Association.

I would like also to thank my cosponsors, Senator LEAHY, Senator DEWINE, and Senator GORDON SMITH, for helping advance this project.

Guaranteeing that all reservists have access to health care—either through civilian employers or Tricare—will ensure that this force is ready to fight at a moment's notice. The bill we are introducing today will not only improve the readiness of the current Reserve Force, but will pay dividends in the future by improving our ability to recruit and retain the best and brightest men and women for the National Guard and Reserves.

The Senate has set aside time each day for the last 3 weeks to honor and support the dedicated service of our troops in Iraq. Surely we can agree that one of our high priorities should be to ensure that, as long as they continue their service to our country, they will always have access to high-quality affordable health care.

Mr. LEAHY. Mr. President, today I am joined by Senator DEWINE, by our minority leader, Senator DASCHLE, and

by Senator SMITH in introducing legislation that will boost the readiness of our Nation's military Reserve.

Never has our Nation relied more heavily on the Selected Reserve—more than 875,000 men and women, who stand ready for deployments at home or abroad, at a moment's notice. More than 54 percent of the U.S. Army's and 34 percent of the U.S. Air Force's end strength resides in the Selected Reserve. Both the Army and the Marine Corps rely on these Reserve forces for almost 20 percent of their manpower strength. The skill, experience and professionalism of these dedicated citizens often meet and exceed those of their brave counterparts in the active force.

It is no wonder that more than 200,000 reservists have been called to duty for service that is related to the war in Iraq. Many States have thousands of their citizens who have temporarily dropped their civilian jobs and left their families for deployments halfway across the globe. More than 300 citizen-soldiers, sailors, airmen, and marines in my home State of Vermont are serving proudly at the moment, here and abroad. When you include the call-ups since the September 11 attacks, the number of activated reservists across the country far exceeds those in the first gulf war.

These deployments have spotlighted some specific and solvable problems that have affected the readiness of the reserves and, in turn, our entire military. Some of the troops who have been called up have not been as healthy as possible. Others have faced the stress of leaving their families behind while looking back in concern as their families try to navigate the sometimes arcane military health care system. While often experiencing a loss of income, reserve family members also have had to leave their civilian doctors and join the military's TRICARE program.

More troubling, many of the members of the Guard and Reserve who might be activated any day do not currently have access to affordable health insurance. A recent General Accounting Office report underscores the fact that most of these uninsured Guard and Reservists reside in the lower enlisted ranks, where the reserve soldiers, sailors, airmen, and marines oftentimes are unemployed or switch jobs frequently. It is unfair to them and their families, and it is unwise for the preparedness of our military, to expect someone to deploy anywhere at the drop of a hat, but then to disregard whether they will be as healthy as possible when we need to call them to active duty.

These men and women are ready to make the ultimate sacrifice for their country, and so are their families. But they are performing as full-time soldiers with part-time benefits.

This situation is preventing the National Guard and the Reserve from being as ready as possible for action. At the same time, the stress and strain that activations place on families has hurt recruiting and retention. To ensure the strongest and most effective reserve and the strongest and most effective military capability, it is critical that we address these issues and provide comprehensive health insurance coverage.

The National Guard and Reserve Comprehensive Health Benefits Act of 2003 will provide seamless health coverage to our reserve forces at all phases of their service. Under our plan, if one of 876,000 members of the Selected is in a drill status, that reservist and his or her family will become eligible to join the TRICARE military health insurance program. The reservist will pay an annual premium, around 30 percent of the annual cost of providing care. For a single reservist, the premium would be about $420 per year, while for a family the annual payment would be about $1,450. This is not rock-bottom-cheap health care, but our aim is to ensure affordable health insurance for hard-working families that may not otherwise have access to coverage.

If a reservist is activated, he or she will continue to have free health care through the military health system. But under our legislation, the reservist's family will be able to avoid the considerable difficulties of switching doctors and health insurance. They also can apply to have their civilian health insurance reimbursed. The program will not cost any more to the Federal Government than the current arrangement because the per capita costs are capped to ensure that they are no more than the cost of TRICARE. And when a reservist comes off active duty, he or she will be able to enter the new premium-based TRICARE program, just as before deployment.

Because reservists will be able to have access to affordable insurance whatever their deployment status, this legislation is being supported by several leading organizations, including the National Guard Association of the United States, NGAUS, the Enlisted National Guard Association of the United States, EANGUS, the Reserve Officers Association, ROA, the Naval Reserve Association, NRA, the National Military Family Association, NMFA, Marine Corps Reserve Officers Association, the National Association for Uniformed Services, the National Military/Veterans Association, and the Military Officers Association, MOA. This legislation is the top priority of The Military Coalition's Guard/Reserve Committee.

We have worked hard to fully understand the existing problems and to construct this efficient and effective solution. I would particularly like to thank former Undersecretary of Defense Fred Pang and former House Armed Services Committee Professional Staff Member Karen Heath for their sage counsel and guidance in developing this legislation. We are part of a strong, bipartisan coalition that will push for enactment of this long-overdue legislation. In the coming weeks we plan to welcome additional cosponsors for this comprehensive bill as we begin the process of moving it without delay through the legislative process and to the President's desk.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 853. A bill to amend title XVIII of the Social Security Act to eliminate discriminatory copayment rates for outpatient psychiatric services under the medicare program; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicare Mental Health Copayment Equity Act with my colleague on the Finance Committee, Senator JOHN KERRY.

In brief, my bill would a correct a serious disparity in payment for treatment of mental disorders under Medicare law. Medicare beneficiaries typically pay 20 percent copayment for outpatient services, including doctor's visits and Medicare pays the remaining 80 percent. But for treatment of mental disorders, Medicare law requires patients pay a 50-percent copayment. Under my bill, this copayment will be reduced over a six year period, starting in 2004, from the current 50 percent to 20 percent. This means that in 2010, patients seeking outpatient treatment for mental illness will pay the same 20 percent copayment required of Medicare patients that receive treatment for any other illness.

Let's look at this issue in another way. If a Medicare patient has an office visit for treatment for cancer or heart disease, the patient is responsible for 20 percent of the doctor's fee. But if a Medicare patient has an office visit with a psychiatrist, psychologist, social worker, or other professional for treatment for depression, schizophrenia, or any other condition diagnosed as a mental illness, the copayment for the outpatient visit for treatment of the mental illness is 50 percent. What sense does this make?

Indeed, my bill has a larger purpose, to help end an outdated distinction between physical and mental disorders, and ensure that Medicare beneficiaries have equal access to treatment for all health conditions. Perhaps this disparity would matter less if mental disorders were not so prevalent. But the Surgeon General has told us otherwise.

The importance of access to treatment for mental disorders is emphasized in a landmark report on mental health released by the Surgeon General in 1999. The Surgeon General reported mental illness was second only to cardiovascular diseases in years of healthy life lost to either premature death or disability. And the occurrence of mental illness among older adults is widespread with a substantial proportion of the population 55 and older—almost 20 percent of this age group—experiencing specific mental disorders that are not part of ''normal'' aging.

Further, older Americans have the highest rate of suicide in the country,

and the risk of suicide increases with age. In fact, in the State of Maine, the suicide rate for seniors is three times as high as the rate for adolescents. Untreated depression among the elderly substantially increases the risk of death by suicide.

There is another sad irony. While Medicare often is viewed as health insurance for people over age 65, Medicare also provides health insurance coverage for people with severe disabilities. The single most frequent cause of disability for Social Security and Medicare benefits is mental disorders—affecting almost 1.4 million of 6 million Americans who receive Social Security disability benefits. Yet, at the same time, Medicare pays less for critical mental health services needed by these beneficiaries than if they had a non-mental disability.

But there also is very good news that there are increasingly effective treatments for mental illnesses. With proper treatment, the majority of people with a mental illness can lead productive lives. By removing financial barriers that inhibit access to treatment services, we will be able to eliminate stigmas and overcome a lack of understanding of mental disorders.

I urge my colleagues to join with me to bring Medicare payment policy for mental disorders into the 21st century.

Mr. KERRY. Mr. President, I am pleased to join my colleague Senator SNOWE in introducing the Medicare Mental Health Copayment Equity Act. This legislation will establish mental health care parity in the Medicare program.

Medicare currently requires patients to pay a 20 percent co-payment for all Part B services except mental health care services, for which patients are assessed a 50 percent co-payment. Thus, under the current system, if a Medicare patient sees an endocrinologist for diabetes treatment, an oncologist for cancer treatment, a cardiologist for heart disease treatment or an internist for treatment of the flu, the co-payment is 20 percent of the cost of the visit. If, however, a Medicare patient visits a psychiatrist for treatment of mental illness, the co-payment is 50 percent of the cost of the visit. This disparity in outpatient co-payments represents blatant discrimination against Medicare beneficiaries with mental illness.

The prevalence of mental illness in older adults is considerable. According to the U.S. Surgeon General, 20 percent of older adults in the community and 40 percent of older adults in primary care settings experience symptoms of depression, while as many as one out of every two residents in nursing homes are at risk of depression. The elderly have the highest rate of suicide in the United States, and there is a clear correlation between major depression and suicide: 60 to 70 percent of suicides among patients 75 and older have diagnosable depression. In addition to our seniors, 400,000 non-elderly disabled Medicare beneficiaries become Medicare-eligible by virtue of severe and persistent mental disorders. To subject the mentally disabled to discriminatory costs in coverage for the very conditions for which they became Medicare eligible is illogical and unfair.

There is ample evidence that mental illness can be treated. Unfortunately, those in need of treatment often do not seek it because they are ashamed of their condition. Among our Medicare population, the mentally ill face a double burden: not only must they overcome the stigma about their illness, but once they seek treatment they must pay one-half of the cost of care out of their own pocket. The Medicare Mental Health Copayment Equity Act will phase-down the 50 percent co-payment for mental health care services to 20 percent over six years. By applying the same co-payment rate to mental health services to which all other outpatient services are subjected, the Medicare Mental Health Copayment Equity Act will bring parity to the Medicare program and improve access to care for our senior and disabled beneficiaries who are living with mental illness. I urge my colleagues to join with us to pass this critical legislation.

I ask unanimous consent that several letters of support be printed in the RECORD.

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

MAINE OSTEOPATHIC ASSOCIATION,
Manchester, ME, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the osteopathic physicians (D.O.'s) in Maine, I want to applaud your leadership efforts in sponsoring the Medicare Mental Health Copayment Equity Act of 2003. This bill would end Medicare's unfortunate discrimination against patients with mental illness.

We support this legislation that would end this discrimination because it requires that Medicare patients pay only the same 20 percent co-payment for mental illness treatment that they pay when seeking other medical treatment, such as treatment for diabetes, asthma or influenza.

The Maine Osteopathic Association appreciates your thoughtfulness, commitment and compassion in equitably treating persons with mental illness.

Your sponsorship of this most important bill is a major step to end Medicare's discrimination coverage of mental illness treatment.

Sincerely,
DANIEL M. PIERCE, D.O.
President.

April 9, 2003.

Hon. JOHN KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: On behalf of the American Association for Geriatric Psychiatry (AAGP), I am writing to add AAGP's endorsement to legislation which you are planning to introduce with Senator Snowe to end the discriminatory copayment required by Medicare for treatment of mental illness.

Medicare coverage of mental health services is fragmented and subject to arbitrary and discriminatory limitations. Although coinsurance for most services covered by Medicare is 20 percent, current law requires a 50 percent co-payment for mental health services furnished by psychiatrists and other health care professionals who specialize in the treatment of mental illness. This limit, which dates back to the inception of the Medicare program in 1965, is based on the outmoded assumption that all mental illness is chronic and requires unlimited therapeutic services. Advances in treatment have made this assumption highly inaccurate. Your bill would establish copayment parity between mental health benefits and other medical benefits under the Medicare program.

Your legislation stands to dramatically improve the lives of Medicare beneficiaries by providing them with the access to mental health care that they deserve.

AAGP commends you for your dedication to ensuring that all Americans have adequate access to effective mental health treatments, and we look forward to working with you to achieve the enactment of this legislation.

Sincerely,
JOEL E. STREIM, M.D.,
President.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment charged for outpatient mental health treatment. It is time for Congress to end what amounts to cost-sharing discrimination by diagnosis. The bill you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent copayment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and is a significant barrier to necessary treatment.

Thank you for your foresight and leadership in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Catherine Finely, who ably represents you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely,
PAUL S. APPELBAUM, M.D.,
President.

NAMI,
THE NATION'S VOICE ON MENTAL HEALTH,
Arlington, VA, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of NAMI's 210,000 members and 1,200 affiliates I am writing to offer our strong support for the Medicare Mental Illness Nondiscrimination Act. Thank you for bringing forward this important legislation to bring a discrimination in outpatient treatment services in the Medicare program. As the nation's largest organization representing persons with severe mental illness and their families, we are extremely grateful for your leadership on this important issue.

Perhaps the most glaring shortcoming in the Medicare program is the discriminatory

co-payment for most outpatient mental illness treatment services. As you know, outpatient psychotherapy services are covered at 50 percent under Medicare, with a 50 percent beneficiary co-payment requirement. This is stark contrast to the 80 percent payment, and 20 percent co-payment for all other outpatient services. In NAMI's view, this is a clear form of discrimination in one of the federal government's most important health care programs—providing coverage to more than 39 million Americans—both seniors and non-elderly people with severe disabilities such as serious mental illnesses. We know that treatment makes a tremendous difference in the lives of persons with mental illness. Your legislation removes a significant financial barrier to such necessary care for the Medicare population.

Thank you for once again leading the way in the Congress in bringing an end to discrimination against persons living with severe mental illness.

Sincerely,

RICHARD C. BIRKEL,
Executive Director.

AMERICAN ASSOCIATION FOR GERIATRIC PSYCHIATRY,
Bethesda, MD, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the American Association for Geriatric Psychiatry (AAGP), I writing to add AAGP's endorsement to legislation which you are planning to introduce with Senator Kerry to end the discriminatory copayment required by Medicare for treatment of mental illness.

Medicare coverage of mental health services is fragmented and subject to arbitrary and discriminatory limitations. Although coinsurance for most services by Medicare is 20 percent, current law requires a 50 percent co-payment for mental health services furnished by psychiatrists and other health care professionals who specialize in the treatment of mental illness. This limit, which dates back to the inception of the Medicare program in 1965, is based on the outmoded assumption that all mental illness is chronic and requires unlimited therapeutic services. Advances in treatment have made this assumption highly inaccurate. Your bill would establish copayment parity between mental health benefits and other medical benefits under the Medicare program.

Your legislation stands to dramatically improve the lives of Medicare beneficiaries by providing them with the access to mental health care that they deserve.

AAGP commends you for your dedication to ensuring that all Americans have adequate access to effective mental health treatments, and we look forward to working with you to achieve the enactment of this legislation.

Sincerely,

JOEL E. STREIM, M.D.,
President.

MAINE PSYCHIATRIC ASSOCIATION,
Manchester, ME, March 19, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE, on behalf of the psychiatric physicians of the Maine Psychiatric Society, I want to offer you my sincere appreciation for your leadership in sponsoring the Medicare Mental Health Copayment Equity Act of 2003, working to end Medicare's historic discrimination against patients with mental illness.

Your legislation would end this discrimination by requiring that discriminatory copayments required of Medicare patients for mental illness treatment would eventually be reduced from the current 50 percent level to the 20 percent level patients pay for other medical treatment, such as treatment for diabetes, heart disease, or the flu. This legislation promotes parity for mental health benefits and improves access to mental health care for all Medicare beneficiaries in Maine and across the country.

The Maine Psychiatric Association appreciates your ongoing commitment to persons with mental illness, and your sponsorship of this most important bill to end Medicare's discriminatory coverage of mental illness treatment.

Sincerely,

EDWARD PONTIUS, M.D.,
Chair, Legislative Affairs Committee,
Maine Psychiatric Association.

MAINE MEDICAL ASSOCIATION,
April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: I am writing to you on behalf of the Maine Medical Association and the Maine Psychiatric Association, representing over 2500 Maine-licensed physicians, to thank you sincerely for assuming the leadership in sponsoring the Medicare Mental Health Co-payment Equity Act of 2003, that would end Medicare's historic discrimination against patients with mental illness.

As you know, mental health illness and treatment are very often complicated by concurrent major physical illnesses, like cancer, heart disease, and diabetes. Unfortunately, co-payment for treatment of mental illnesses are two and a half times higher than that for physical illnesses. Your legislation would end this discrimination by requiring that Medicare patients pay only the same 20 percent co-payment for mental illness treatment that they would pay when seeking other medical treatment.

The Maine Medical Association and the Maine Psychiatric Association appreciate your ongoing commitment to persons with mental illness and your sponsorship of this most important bill to end Medicare's discriminatory coverage of mental illness treatment.

Sincerely,

KRISHNA BHATTA, M.D.,
President.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, April 9, 2003.

Hon. JOHN KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment charged for outpatient mental health treatment. It is time for Congress to end what amounts to cost-sharing discrimination by diagnosis. The bill you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent copayment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and is a significant barrier to necessary treatment.

Thank you for your foresight and leadership in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Kelly Bovio, who ably represented you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely,

PAUL S. APPLEBAUM, M.D.,
President.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 854. A bill to authorize a comprehensive program of support for victims of torture, and for other purposes; to the Committee on Foreign Relations.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I introduce today to authorize a comprehensive program of support for victims of torture be printed in the RECORD.

There being on objection, the bill was ordered to be printed in the RECORD, as follows:

S. 854

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 ''Torture Victims Relief Reauthorization Act of 2003''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) there are authorized to be appropriated to the President to carry out section 130 of such Act $11,000,000 for fiscal year 2004, $12,000,000 for fiscal year 2005, and $13,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.

Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $6,000,000 for fiscal year 2004, $7,000,000 for fiscal year 2005, and $8,000,000 for fiscal year 2006.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR DOMESTIC TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 5(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for the Department of Health and Human Services for fiscal years 2004, 2005, and 2006, there are authorized to be appropriated to carry out subsection (a) $20,000,000 for fiscal year 2004, $25,000,000 for fiscal year 2005, and $30,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. GRASSLEY):

S. 855. A bill to amend the Internal Revenue Code of 1986 to modify the unrelated business income limitation on investment in certain debt-financed properties; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Small Business Investment Company Capital Access Act of 2003 whose purpose is to increase the amount of venture capital available to small businesses. As the chair of the Committee on Small Business and Entrepreneurship, I am pleased that my good friend and former chairman of the Committee, Senator BOND, and the chairman of the Senate Finance Committee, Senator GRASSLEY, have agreed to be the principal cosponsors of this important bill.

During the past 2 years, there has been a significant contraction of the private equity market. During this same period, the Small Business Administration's Small Business Investment Company program has taken on a significant role in providing venture capital to small businesses seeking investments in the range of $500,000 to $3 million.

Small Business Investment Companies are government-licensed, government-regulated, privately managed venture capital firms created to invest only in original issue debt or equity securities of U.S. small businesses that meet size standards set by law. In the current economic environment, the SBIC program represents an increasingly important source of capital for small enterprises.

While debenture SBICs qualify for SBA-guaranteed borrowed capital, the Government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they would be subject to tax liability for unrelated business taxable income. More often than not, tax-exempt investors opt to invest in venture capital funds that do not create UBTI. As a result an estimated 60 percent of the private capital potentially available to these SBICs is effectively off limits.

The Small Business Investment Company Capital Access Act of 2003 would correct this problem by excluding government-guaranteed capital of debenture SBICs from debt for purposes of the UBTI rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI recordkeeping or tax liability.

In 1958, Congress created the SBIC program to assist small business owners in obtaining investment capital. More than 40 years later, small businesses continue to experience difficulty in obtaining investment capital from banks and traditional investment sources. Although investment capital is readily available to large businesses from traditional Wall Street investment firms, small businesses seeking investments in the range of $500,000 to $3 million have to look elsewhere. SBICs are frequently the only sources of investment capital for growing small businesses.

Often we are reminded that the SBIC program has helped some of our Nation's best known companies. It has provided a financial boost at critical points in the early growth period for many companies that are familiar to all of us. For example, when Federal Express needed help from reluctant credit markets, it received a needed infusion of capital from two SBA-licensed SBICs at a critical juncture in its development stage. The SBIC program also helped other well-known companies, when they were not so well known, such as Intel, Outback Steakhouse, America Online, and Callaway Golf.

What is not well known is the extraordinary help the SBIC program provides to main street America small businesses. These are companies we know from hometowns all over the United States. Main street companies provide both stability and growth in our local business communities.

In 1991, the SBIC program was experiencing major losses, and the future of the program was in doubt. Consequently, in 1992 and 1996, the Committee on Small Business worked closely with the Small Business Administration to correct deficiencies in the law in order to ensure the future of the program.

Today, the SBIC program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital. And it is important to focus on the significant role that is played by the SBIC program in support of growing small businesses. When Fortune Small Business compiled its list of 100 fastest growing small companies in 2000, six of the top 12 businesses on the list received SBIC financing during their critical growth year.

The Small Business Investment Company Capital Access Act of 2003 is important for one simple reason: once enacted it paves the way for more investment capital to be available for more small businesses that are seeking to grow and hire new employees. According to the National Association of Small Business Investment Companies, a conservative estimate of the effect of this bill would be to increase investments in debenture SBICs by $200 million per year from tax-exempt investors. Together with SBA-guaranteed leverage, that will mean as much as $500 million per year in new capital assets for debenture SBICs to invest in U.S. small businesses.

According to the SBA, one job is created for every $36,000 invested in a small company. At that rate, this bill could be responsible for the creation or support of as many as 16,600 jobs—within companies receiving investments directly as well as within those firms benefitting indirectly through increased sales of goods and services to the former companies. In short, this bill is a jobs creator.

And the cost? The Joint Committee on Taxation estimated in the last Congress that this bill would result in tax revenue loss of only $1 million per year for the next 10 years.

Mr. President, the cost is low and the potential for economic gain is great. Passage of the bill will make the Government's existing SBIC program more effective in providing growth capital for America's small business entrepreneurs.

And most importantly, it will provide sorely needed capital for the sector of our economy that provides a majority of the net new jobs in this country—small businesses. That is a real stimulus that would cause new investments to be made and the creation of critically needed new jobs. Our economy is primed for this kind of support, and I urge my colleagues to support this important bill.

I ask unanimous consent that the text of the bill and a summary of its provisions be printed in the RECORD.

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

''SMALL BUSINESS INVESTMENT COMPANY CAPITAL ACCESS ACT OF 2003''

DESCRIPTION OF PROVISIONS

The bill amends section 514 of the Internal Revenue Code to exclude government-guaranteed capital borrowed by Debenture Small Business Investment Companies (SBICs) from debt for purposes of the Unrelated Business Taxable Income (UBTI) rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI record keeping or tax liability.

Currently, while Debenture SBICs qualify for borrowed capital guaranteed by the Small Business Administration, the government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they would be subject to tax lability for UBTI. Frequently, tax-exempt investors generally opt to invest in venture capital funds that do not create UBTI. As a result, an estimated 60% of the private-capital potentially available to these SBICs is effectively ''off limits.''

S. 855

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Investment Company Capital Access Act of 2003''.

SEC. 2. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN DEBT-FINANCED PROPERTIES.

(a) IN GENERAL.—Section 514(c)(6) of the Internal Revenue Code of 1986 (relating to acquisition indebtedness) is amended—

(1) by striking ''include an obligation'' and inserting ''include—

''(A) an obligation'',

(2) by striking the period at the end and inserting '', or'', and

(3) by adding at the end the following:

''(B) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

''(i) issued by such company under section 303(a) of such Act, or

''(ii) held or guaranteed by the Small Business Administration.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to acquisitions made on or after the date of the enactment of this Act.

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mr. DASCHLE, and Mr. JOHNSON):

S. 856. A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, and Mr. COCHRAN):

S. 857. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing two key education initiatives designed to promote quality education across our country and respond to the compelling needs in our schools. When I meet with teachers and parents, and even business leaders in West Virginia, everyone is concerned about the condition of our school buildings and the importance of qualified committed teachers working in those classrooms.

To address these clear and compelling needs, I am introducing two education bills. The first initiative, America's Better Classroom Act of 2003, is a school construction initiative to respond to the overwhelming needs for school construction. The Department of Education reports that the average public school building is 42 years old. In 1995, GAO estimated that we needed $112 billion for school construction and renovations. A more recent survey in 2001 in the Journal of Education Finance indicates that the need is increasing, and the unmet need for school infrastructure over the next decade is over $200 billion. My State of West Virginia will need as much as $2 billion for school construction and renovations.

America's Better Classroom Act provides the financial tools to help build and renovate our schools. It will continue the Qualified Zone Academy Bonding, QZAB, Program that has helped economically disadvantaged communities. This provision would provide $2.8 billion to continue and expand the successful QZAB Program. In recent years, this program has provided $4.2 million for support school construction and renovations in disadvantaged communities. Effective programs have earned continued support.

But the truth is that many schools districts need help with school construction and renovations, which is why the America's Better Classroom Act creates a $22 billion Qualified School Bonding Program. Funding will be allocated to the states based on the Title 1 formula so it is targeted, but the states will have flexibility in allocating support among school districts.

Last summer, I toured two schools in Berkeley County, WV—Martinsburg High School and South Middle School. The high school was built in 1928, but it had been renovated. The middle school was built in 1954, and needed serious work. The cafeteria had to serve as a part-time classroom, and they used portable trailers. These schools are in our eastern panhandle which is the region of the greatest population growth, so Berkeley County predicts that it will need to build or renovate nine schools over the next 10 years. Given the current state fiscal crisis, states and communities need the America's Better Classroom Act so that we can make needed investments. Also school construction can play a positive role in helping to stimulate our economy and create needed jobs. School construction is a more reliable economic stimulus, and an important investment in our children's education. I am proud to have Senators TOM HARKIN, TOM DASCHLE, and TIM JOHNSON as cosponsors of this important initiative. Senator HARKIN has been a true leader on education issues throughout this career, including school construction and renovations.

The next initiative to improve education is a bipartisan bill, known as Incentives to Educate American Children Act, or I TEACH. I am proud to have Senators DEWINE, LANDRIEU, and COCHRAN as cosponsors.

Under No Child Left Behind, every classroom should have a qualified teacher. Studies suggest that an estimated 2 million new teachers will be needed in our classrooms over the next decade. It will be important to ensure that we recruit and retain good teachers in every classroom, including our most disadvantaged schools and our rural schools, which often have more trouble recruiting and keeping teachers.

Unfortunately, without our help, America's disadvantaged and rural schools may not be able to attract the qualified teachers required by the No Child Left Behind Act. Isolated and impoverished, competing against higher paying and well-funded school districts for scarce classroom talent, they are already facing a desperate shortage of qualified teachers. As pressure to hire increases, that shortage could become a crisis, and children already at a disadvantage in relation to their more affluent and less isolated peers will be the ones who suffer most. Principals in West Virginia already are reporting shortages of trained teachers.

To help bring dedicated and qualified teaching professionals into our schools, the I TEACH Act will provide teachers a $1000 refundable tax credit every year they practice their profession in the public schools where they are needed most. In addition to this incentive for disadvantage and rural schools, every public school teacher has the ability to earn a $1000 refundable tax credit if a teacher achieves the National Board for Professional Teaching Standards certification. Under the bill, every teacher willing to work in underserved schools will earn a tax credit. Every teacher who gets Board certification will earn a tax credit. Teachers who work in rural or poor schools and get certified will have both credits, worth $2000. Schools who desperately need help attracting teachers will get a boost. And children educated in poor and rural schools will benefit most.

One-fourth of America's children attend public schools in rural areas, and of the 250 poorest counties in the United States, 244 are rural. West Virginia has rural schools scattered throughout 36 of its 55 counties, and these schools face real challenges in recruiting and retaining teachers, as well as dealing with other issues related to their rural location. Attracting teachers to these schools is difficult in large part due to the vast gap between what rural districts are able to offer and the salaries paid by more affluent school districts—as wide as $20,000 a year, according to one study. Poor urban schools must overcome similar difficulties. It is often a challenge for these schools to attract and keep qualified teachers. Yet, according to the 2001 No Child Left Behind Act, every school must have qualified teachers by the end of the 2005–2006 school year.

In my State of West Virginia, as in over 30 other States, there is already a state fiscal incentive for teachers who earn National Board certification. My legislation builds upon the West Virginia program; together, they add up to a powerful tax incentive for teachers to remain in the classroom and to use their skills where they are most needed.

Education should be among our top national priorities, essential for every family with a child and vital for our economic and national security. I supported the bold goals and higher standards of the 2001 No Child Left Behind Act, but they won't be met unless we invest in quality schools and good teachers. I am committed to working closely with my Senate colleagues this fall to secure as much funding as possible for our children's education.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. SMITH, Mr. DODD, Mr. LEAHY, Mrs. MURRAY, Mr. DURBIN, Mr. LAUTENBERG, and Mr. BINGAMAN):

S. 859. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the

Microbicides Development Act of 2003. I am very pleased to be introducing this bipartisan bill along with my colleagues, Senators SNOWE, CANTWELL, GORDON SMITH, DODD, LEAHY, MURRAY, DURBIN, and LAUTENBERG. I thank my colleagues for their support of this important legislation, which we believe is vital to the pursuit of combating the global HIV/AIDS crisis.

As you know, recently released UN reports paint the most horrendous picture yet of the HIV epidemic, with AIDS continuing to kill more people worldwide than any other infectious disease, and sparing no corner of the world. According to the UN, China could have more than 10 million HIV-infected people by 2010. Infection rates in Russia and Eastern Europe are rising faster than anywhere else. India may soon have the largest number of people living with HIV/AIDS in the world. And Sub-Saharan Africa remains devastated by an epidemic that has lowered life expectancy from 62 years on average to just 47. In hard-hit countries like Botswana, where 45 percent of women attending prenatal clinics are HIV-positive, a 15-year old youth has an 80 percent chance of dying of AIDS.

The UN reports come on the heels of CIA assessments that the AIDS pandemic is entering a ''stage of substantial increases in size and scope.''

Despite alarm bells ringing from the organizations as diverse in mandate as the UN and the CIA, little attention is paid to the reality that the face of the HIV epidemic both at home and abroad is increasingly female. As of the end of 2002, according to the Joint United Nations/World Health Organization Programme on HIV/AIDS, half of the world's HIV/AIDS-infected people were women. In Sub-Saharan Africa, 58 percent of all adult HIV/AIDS cases were found in women, and in hard-hit nations such as Zambia, girls are five times more likely than boys to be HIV positive.

Here in the United States, 30 percent of new HIV infections each year occur among women, most of whom, 64 percent, are African-American. The majority of U.S. women, 75 percent, acquire the disease through heterosexual transmission. My own State of New Jersey has the Nation's highest HIV/AIDS infection rate among women and the sixth highest infection rate among all adults. And here in our Nation's capital, one in three people with HIV now is a woman.

Biologically, women are four times more vulnerable to HIV infection. Their vulnerability increases due to their lack of economic and social power in many societies, where women often cannot control sexual encounters or insist on protective measures such as abstinence or mutual monogamy. The typical woman who gets infected with HIV has only one partner—her husband. This trend devastates families and puts children at risk.

This astounding reality bears restating: The single greatest risk factor for a woman in the developing world of contracting the HIV virus is being married.

Women need HIV-prevention tools that they can control to safeguard their health and that of their families and communities. Unfortunately, there exists absolutely no HIV or STD prevention method that is within a woman's personal control. Condom use must be negotiated with a partner. We are all aware that for too many women, particularly low-income women in the developing world and many in our own country who rely upon a male partner for economic support, there is no power of negotiation. We know these women are at risk—yet, we expect them to protect themselves without any tools.

Today we have the opportunity to invest in groundbreaking research that can produce these tools, and ultimately, empower women. Microbicides are self-administered products that women could use to prevent transmission of STDs, including HIV/AIDS. I say ''could'' because due to insufficient research investments, no microbicides have been brought to market. This legislation would expand federal investments for microbicide research at the National Institutes for Health, NIH, the Centers for Disease Control and Prevention, CDC, and the United States Agency for International Development, USAID.

In addition to encouraging new investments in microbicide research, the Microbicides Development Act will expedite the implementation of the NIH's five-year strategic plan for microbicide research, as well as expand coordination among Federal agencies already involved in this research, including NIH, CDC, and the United States Agency on International Development, USAID.

Perhaps most importantly, the legislation calls for the establishment of a Microbicide Research and Development Branch within the National Institute of Allergy and Infectious Diseases.

The National Institutes of Health, principally through the National Institute of Allergy and Infectious Diseases, NIAID, spends the majority of Federal dollars in this area. However, microbicide research at NIH is currently conducted with no single line of administrative accountability or specific funding coordination. In addition, other federal agencies such as CDC and USAID undertake microbicides research and development activities. Because there is no federal coordination, however, there is the risk that inefficiencies and duplication of effort could result. Through a variety of committees Congress has requested that NIH and its Office of AIDS Research provide Congress with a ''federal coordination plan'' for research and development in this area, but formal submission of this plan has been repeatedly delayed.

A branch dedicated to microbicide research and development at the NIH is essential to providing the appropriate staff and funding for the coordination of these activities at the NIH and across agencies.

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

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

S. 859

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 ''Microbicide Development Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) During 2002, AIDS caused the deaths of an estimated 3,100,000 people, including 1,200,000 women and 610,000 children under 15 years of age. An estimated 14,000,000 children living today have lost one or both parents due to AIDS.

(2) Worldwide, heterosexual transmission is accounting for an increasing share of new HIV infections, with adolescents, women, and disadvantaged people at particular risk.

(3) In the United States, for example, African American and Latina women account for 64 percent and 17 percent of all reported HIV cases, respectively, even though they represent only 25 percent of the total United States female population.

(4) Half of the 38,600,000 adults living today with HIV/AIDS are women.

(5) Biological, cultural, economic, and social factors combine to make women and girls particularly vulnerable to HIV and other sexually transmitted diseases (referred to in this section as ''STDs''). In the hardest hit areas of Africa, almost one-quarter of 15 to 19 year-old girls are already infected with HIV, compared to 4 percent of their male peers.

(6) In addition to HIV, other STDs can cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV. When women become infected with HIV, they risk passing along the infection to their infants, either through pregnancy, childbirth, or breastfeeding.

(7) Regrettably, today's HIV prevention methods do not meet the needs of the millions of women worldwide who, for cultural, economic, and social reasons, cannot insist on protective measures such as abstinence, condom use, or mutual monogamy.

(8) A large majority of women become infected with HIV with only one partner—their husbands. Women need prevention options that they can use consistently within ongoing, long-term relationships.

(9) Microbicides are a promising new technology, complementary to vaccines, that could put the power of prevention into women's hands. Formulated as gels, creams, or films, microbicides inactivate, block, or otherwise interfere with the pathogens that cause HIV/AIDS and other STDs.

(10) Even a moderately effective microbicide could have a substantial impact on the HIV epidemic. The London School of Hygiene and Tropical Medicine estimates that a 60 percent efficacious microbicide introduced into the 73 poorest countries could avert 2,500,000 HIV infections in men, women, and children over 3 years.

(11) Microbicides would also benefit men, because their protective effect is likely to be bidirectional.

(12) Numerous potential microbicides are poised for successful development. Thirteen

products are in clinical trials and approximately 50 compounds exist that could be investigated further. There is a backlog in the research and development pipeline, however, so that innovative and promising product concepts are languishing, while infection rates are growing.

(13) At present, there is insufficient economic incentive for large pharmaceutical companies to become actively engaged in microbicide research and development, thus, Federal support is crucial. Three Federal agencies—the National Institutes of Health, the Centers for Disease Control and Prevention, and the United States Agency for International Development—have played important roles in progress to date, but strong, effective, well-coordinated, and visible public sector leadership will be essential for the promise of microbicides to be realized.

(14) A microbicide could be available within 5 to 7 years if sufficient public sector funding were made available to accelerate research and support the necessary clinical trials.

(15) Microbicide research and development currently receive only 2 percent of the AIDS research budget of the National Institutes of Health, not nearly enough to keep pace with public health need and scientific opportunity.

(16) The United States Agency for International Development sustains strong partnerships with public and private organizations working on microbicide research, importantly including clinical trials in developing countries where its experience is extensive. The long experience of such Agency in logistics management, service delivery, provider training, and social marketing position it well to prepare for and implement the introduction of microbicides once they are available.

(17) The Centers for Disease Control and Prevention also engages in critical microbicide research and clinical testing, and has a long history of conducting field trials in developing countries.

(18) For the microbicide pipeline to advance significantly and the essential clinical trials to be fielded soon, the current amount of Federal investment needs to increase to $130,000,000 in fiscal year 2004 and to $160,000,000 in fiscal year 2005.

TITLE I—MICROBICIDE RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH

SEC. 101. OFFICE OF AIDS RESEARCH; PROGRAM REGARDING MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Subpart I of part D of title XXIII of the Public Health Service Act (42 U.S.C. 300cc–40 et seq.) is amended by inserting after section 2351 the following:

"SEC. 2351A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) FEDERAL STRATEGIC PLAN.—

''(1) IN GENERAL.—The Director of the Office of AIDS Research shall expedite the development and implementation of a Federal strategic plan for the conduct and support of microbicide research and shall biannually review and as appropriate revise the plan.

''(2) COORDINATION.—In developing, implementing, and reviewing the plan, the Director of the Office of AIDS Research shall coordinate with—

''(A) other Federal agencies, including the Director of the Centers for Disease Control and Prevention and the Administrator of the United States Agency for International Development, involved in microbicide research;

''(B) the microbicide research community; and

''(C) health advocates.

''(b) EXPANSION AND COORDINATION OF ACTIVITIES.—The Director of the Office of AIDS Research, acting in coordination with other relevant institutes and offices, shall expand, intensify, and coordinate the activities of all appropriate institutes and components of the National Institutes of Health with respect to research on the development of microbicides to prevent the transmission of HIV and other sexually transmitted diseases.

''(c) MICROBICIDE DEVELOPMENT BRANCH.—In carrying out subsection (b), the Director of the National Institute of Allergy and Infectious Diseases shall establish within the Vaccine and Prevention Research Program of the Division of AIDS in the Institute, a branch charged with carrying out microbicide research and development. In establishing such branch, the Director shall ensure that there are a sufficient number of employees dedicated to carry out the mission of the branch.

''(d) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date on which the initial Federal strategic plan is developed under subsection (a), and biannually thereafter, the Director of the Office of AIDS Research shall submit to the appropriate committees of Congress a report that describes the strategies being implemented by the Federal Government regarding microbicide research and development. Each such report shall include—

''(A) a description of activities with respect to microbicides conducted and supported by the Federal Government;

''(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities within each agency;

''(C) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides;

''(D) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

''(E) an updated Federal Strategic Plan, including professional judgment funding projections.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate.

''(e) HIV DEFINITION.—For purposes of this section, the term 'HIV' means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(f) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

TITLE II—MICROBICIDE RESEARCH AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION

SEC. 201. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended—

(1) by transferring section 317R so as to appear after section 317Q; and

(2) by inserting after section 317R (as so transferred) the following:

"SEC. 317S. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Director of the Centers for Disease Control and Prevention shall fully implement the Center's 5-year topical microbicide agenda to support microbicide research and development. Such an agenda shall include—

''(1) conducting laboratory research in preparation for, and support of, clinical microbicide trials;

''(2) conducting behavioral research in preparation for, and support of, clinical microbicide trials;

''(3) developing and characterizing domestic populations and international cohorts appropriate for Phase I, II, and III clinical trials of candidate topical microbicides;

''(4) conducting Phase I and II clinical trials to assess the safety and acceptability of candidate microbicides;

''(5) conducting Phase III clinical trials to assess the efficacy of candidate microbicides;

''(6) providing technical assistance to, and consulting with, a wide variety of domestic and international entities involved in developing and evaluating topical microbicides, including health agencies, extramural researchers, industry, health advocates, and nonprofit organizations; and

''(7) developing and evaluating the diffusion and effects of implementation strategies for use of effective topical microbicides.

''(b) STAFFING.—In carrying out the microbicide agenda, the Centers for Disease Control and Prevention shall ensure that there are sufficient numbers of dedicated employees for carrying out the agenda under subsection (a).

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Director of the Centers for Disease Control and Prevention shall submit to the appropriate committees of Congress, a report on the strategies being implemented by the Centers for Disease Control and Prevention with respect to microbicide research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbicides compiled annually by the National Institutes of Health Office of AIDS Research as required under section 2351A. Such report shall include—

''(A) a description of activities with respect to microbicides conducted and supported by the Centers for Disease Control and Prevention;

''(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities;

''(C) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides; and

''(D) a review of the remaining scientific and programmatic obstacles with respect to microbicides.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate.

''(d) DEFINITION.—For the purposes of this section, the term 'HIV' means the human

immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

TITLE III—MICROBICIDE RESEARCH AT THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 301. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by inserting after section 104 the following:

''SEC. 104A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT.—The Office of HIV/AIDS of the Agency for International Development, in conjunction with other offices within the Agency for International Development, shall fully implement the Agency's microbicide agenda to support the development of microbicides, and facilitate wide-scale introduction once microbicide products are available. Such an agenda shall include—

''(1) support for the discovery, development, and preclinical evaluation of topical microbicides;

''(2) support for the conduct of clinical studies of candidate microbicides to assess safety, acceptability, and effectiveness in reducing HIV and other sexually transmitted diseases;

''(3) support for behavioral and social science research relevant to microbicide development, testing, acceptability, and use;

''(4) support for preintroductory and introductory studies of safe and effective microbicides in developing countries; and

''(5) facilitation of access to microbicides as they become available to women at highest risk of HIV and other sexually transmitted diseases as soon as possible.

''(b) STAFFING.—The Office of HIV/AIDS of the Agency for International Development shall ensure that there are sufficient numbers of dedicated employees for purposes of carrying out the agenda under subsection (a).

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Administrator of the Agency for International Development shall submit to the appropriate committees of Congress a report on the strategies being implemented by the Agency for International Development with respect to microbicide research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbicides compiled annually by the National Institutes of Health Office of AIDS Research as required under section 2351A. Such report shall include—

''(1) a description of activities with respect to microbicides conducted and supported by the Agency for International Development;

''(2) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities;

''(3) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides;

''(4) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

''(5) a description of the steps being taken to increase access and availability of approved microbicides to prevent HIV and other sexually transmitted diseases.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

''(d) DEFINITION.—For the purposes of this section, the term 'HIV' means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

Mr. DURBIN. Mr. President, I am honored to be a cosponsor of the Microbicides Development Act of 2003. The legislation calls for a redoubling of the effort at the National Institutes of Health and the Centers for Disease Control to develop microbicides, a class of products that can prevent transmission of HIV and other sexually transmitted diseases in women and their partners.

As this Congress continues to fight AIDS, taking tiny steps in pursuit of a challenge racing away from us, I see the development of microbicides as another ''tiny'' step forward. I believe microbicides are an important addition to the arsenal to fighting AIDS, and indeed the Global AIDS bill I introduced, The Global CARE Act of 2003, S. 250, includes microbicides among the preventative measures the U.S. should support.

I, and the other cosponsors of this important legislation, see a real need and urgency to expand the range of preventive interventions for HIV transmission. The ABC options for preventing HIV infection, which remain a key part of our response and contribute to the world's ability to slow the spread of HIV/AIDS, have not changed since the 1980s: A, abstinence when it comes to sexual activity; B, be faithful to one partner; C, if you are going to ignore the other two, use a condom. Despite the effectiveness of the ABCs in many areas, HIV/AIDS continues to spread. We urgently need more prevention options.

Microbicides, defined as antimicrobial products that can be applied topically for the prevention of sexually transmitted diseases, STDs, including HIV, may offer one of the most promising preventive interventions. They could prove to be safe, effective, inexpensive, readily available, and widely acceptable. Microbicides will add to the range of options available. Most importantly, microbicides offer an additional method of prevention that can be controlled by women.

Notwithstanding the knowledge of successful HIV prevention strategies—condom use, reduction in the number of sexual partners, diagnosis and treatment of sexually transmitted infections—HIV continues to spread at an alarming rate especially among women in developing countries.

In sub-Saharan Africa, the area hardest hit by the pandemic, women and girls account for 58 percent of those living with AIDS. Worldwide, women represent 50 percent of those infected, an increase of 9 percent in five years. In some of the hardest hit countries in southern Saharan Africa, HIV prevalence among girls aged 15 to 19 is four to seven times higher than among boys their age. Attitudes, beliefs, and taboos surrounding sex, the status of women and children, and the source and causes of AIDS also complicate attempts to control transmission and provide appropriate prevention and treatment.

In the United States, more than 30 percent of newly reported HIV cases diagnosed are occurring in women, according to the most recent data collected by the Centers of Disease Control. As in the rest of the world, the majority of these reported HIV infections among U.S. women result from heterosexual transmission, and the data suggest that younger women are disproportionately at risk for acquiring HIV.

Microbicides will be particularly attractive to those who do not wish to draw attention to the fact that they are using a prevention method. Unlike male or female condoms, microbicides are a potential preventive option that women can easily control and that does not require the cooperation, consent or even knowledge of the partner. Microbicides are likely to be cheaper than condoms and, in the future, microbicides could be used to prevent mother-to-child transmission of HIV.

Microbicides have been under development for more than a decade. Yet, it is unlikely that they will be available before 2007, which leads to the general perception that there has been insufficient progress in this area. Three versions are currently in the final stages of clinical trials to determine whether they are safe and effective. Many factors contribute to this slow progress. The National Institutes of Health, NIH, reports that microbicide research requires huge and complex efficacy and effectiveness studies that must be conducted in areas with high HIV incidence rates. Such rates occur predominantly in developing countries where the research infrastructure is underdeveloped. Given this dependency on poorer, developing nations, it is not surprising that no large pharmaceutical company is interested in funding microbicide development. A second obstacle lies in the ethical obligation to provide counseling and make condoms available to the study subjects, which adds to the complexity and

size of the trials. As a result, NIH explains, few Phase III efficacy trials have been completed. Of those completed, few have yielded promising results.

Reflecting on the reality of the global epidemic, United Nations Secretary General Kofi Annan stated that the face of the HIV epidemic is that of a woman. ''If you want to save Africa,'' Annan says, ''you must save the African woman first. It is they who care for the young, the old, the sick and the dying. It is they who nurture social networks that help societies share burdens.''

Lack of access to treatment and care means that for the majority of HIV-positive women throughout the world, HIV infection is a death sentence. In Haiti, for example, AIDS is now the leading cause of death for women of childbearing age.

Microbicides will never become a viable option for prevention unless a serious amount of money is invested in their development. Senator CORZINE's legislation will make microbicide research a priority, calling for the expansion and coordination of microbicide activities at the National Institutes of Health and other agencies working in this field. The bill requires the Centers for Disease Control to implement a 5-year topical research plan and requires the U.S. Agency for International Development to develop and implement a microbicide agenda.

I am proud to join Senator CORZINE as a cosponsor of this legislation and hope that my colleagues will join us as we determine the next steps in our battle against AIDS, including the development of prevention efforts that may help women take control of their lives and their survival.

By Mr. HOLLINGS (for himself, Mr. GREGG, Mr. KERRY, Ms. SNOWE, Mr. INOUYE, Mr. REED, Mr. BREAUX, Mr. DEWINE, Mr. SARBANES, Mr. BIDEN, Mr. KENNEDY, Ms. MIKULSKI, Mr. COCHRAN, Mrs. MURRAY, Mr. CORZINE, Ms. COLLINS, Mr. DODD, Mr. LEVIN, Mr. NELSON of Florida, Mr. WYDEN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. CHAFEE):

S. 861. A bill to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today with my colleague Senator GREGG to introduce the Coastal and Estuarine Land Protection Act of 2003. Senator GREGG and I introduced this bill last session, and it was reported favorably by the Commerce Committee, but time did not permit action to be completed on the bill before the end of the Congress. My colleagues and I will work hard to pass this important piece of legislation during the 108th Congress.

I would like to thank our cosponsors, 24 in all, Senators KERRY, SNOWE, INOUYE, JACK REED, BREAUX, DEWINE, SARBANES, BIDEN, KENNEDY, MIKULSKI, COCHRAN, MURRAY, CORZINE, COLLINS, DODD, LEVIN, BILL NELSON, WYDEN, LIEBERMAN, FEINSTEIN, LAUTENBERG, CANTWELL, and CHAFEE for their strong support of this bill, which marks another important chapter of our thirty year effort to put coastal and ocean issues at the forefront of environmental policy.

I am also proud to say that the bill is strongly supported by The Trust for Public Land, Coastal States Organization, The Nature Conservancy, Land Trust Alliance, International Association of Fish and Wildlife Agencies, American Sportfishing Association, and the South Carolina Wildlife Federation. I understand that the U.S. Commission on Ocean Policy will also endorse this approach.

When I was Governor of South Carolina over 30 years ago, I experienced first hand the need for Federal direction and assistance to the States to enable them to effectively and sustainably manage coastal development. My experiences during a series of coastal hearings and continued research in the Senate led me to write the Coastal Zone Management Act of 1972, which provided clear policy objectives for states to establish coordinated coastal zone management programs to help balance coastal development with protection.

But we appear to need more tools to help States continue the job we started in 1972. In the year 2003, as our population grows, more and more people are moving to the coast to enjoy its beauty and recreational opportunities. In fact, by 2010, an estimated 60 percent of Americans will live along our coasts, which represent less than 17 percent of our land area. More than 3,000 people move to coastal areas everyday, and 14 of the Nation's 20 largest cities are on the coast, and are five times more densely populated than the interior of the country. As these good folks move to take advantage of coastal living, we have to be careful that we don't destroy the natural resources and quality of life that draw them to our shores. Big changes are coming to all of our coastal counties, and we must make some careful and smart decisions if we want to keep the very resources we depend on.

In particular, estuaries and wetlands have many unique attributes that make them important to both our natural resources and our economy. Estuaries, and the watersheds that flow into them, support fisheries and wildlife and contribute immensely to the coastal area economies. But these ecologically and economically important watersheds are also under the most threat from land development and conversion away from their natural state. Coastal urbanization trends are particularly strong in the southeastern areas. In my State alone, the Forest Service has estimated natural forests of the coastal plain will decrease by 1.9 million acres in the next 40 years—a 35 percent loss of South Carolina's forests. These findings and future trends tell me that for the good of our coastal communities we need some fast, targeted action to protect ecologically important coastal areas most threatened with development or conversion.

Now more than ever, the pressures of urbanization and pollution along our nation's coasts threaten to impair watersheds, impact wildlife habitat and cause irreparable damage to the fragile coastal ecology. The Environmental Protection Agency has reported that some areas of the country are seeing some improvement from the heavily polluted status of the past, but predicts that the more pristine areas like the Southeast, which has some of the best water quality in the Nation, will experience degradation of water quality due primarily to runoff of pollutants from rapid development in our coastal watersheds. This is very bad news for the shrimpers, oystermen, and recreational users who depend on these waters for their livelihood and quality of life.

We see strong signals of what continuing down this path will bring us: beach and shellfish closings, fish kills, and human health impacts. The National Research Council reports that over the next 20 years over 70 percent of our estuaries will experience more low oxygen—or ''eutrophic''—conditions, such as the Gulf ''Dead Zone.'' If this trend continues, our coastal economies will suffer and perhaps never recover. I know in my state the economy would falter greatly from the lack of fishing, shrimping and tourism opportunities, and this is true up and down the Atlantic coast, which contains 37 percent of the Nation's estuarine areas.

The good news is that there are ways we can make a difference, and we have some good models we can turn to. I am proud to say my home State of South Carolina is a leader in this area. The past decade I have led an extensive cooperative conservation effort, bringing together the State of South Carolina, private landowners, groups like the Nature Conservancy, Ducks Unlimited and federal partners like NOAA and the Fish and Wildlife Service to protect the ACE Basin. It is now the largest pristine estuarine reserve on the East Coast, a 350,000-acre area at the convergence of the Edisto, Ashepoo and Combahee Rivers, which comprises many ecologically important habitats that are home to many fish and bird species, including a number of endangered species. An outcome of these efforts is that the ACE Basin, already home to a National Wildlife Refuge, was declared a National Estuarine Research Reserve in 1992, and has been growing in size ever since. In building the ACE Basin, the partners worked creatively and in a coordinated manner, and we successfully obtained land acquisition funds through a variety of

federal sources, including the Forest Legacy Program.

What became clear, however, is that there is no Federal program explicitly setting aside funding for conservation of coastal lands, where the needs are clearly the greatest. That is exactly what the Coastal and Estuarine Land Protection Act of 2003 will do. It authorizes a competitive matching grant program in NOAA to enable states to permanently protect important coastal areas.

Under this NOAA program, coastal states can compete for matching funds of up to 75 percent to acquire land or easements for the protection of endangered coastal areas that have considerable conservation, recreation, ecological, historical or aesthetic values threatened by development or conversion. The bill also provides funding for a regional watershed demonstration project that can be used as a model for future watershed-scale programs. The program is authorized at $60 million for fiscal year 2004 and beyond, with an additional $5 million for the regional watershed demonstration project.

By establishing a plan for the preservation of our coastal areas, the Coastal and Estuarine Land Protection Act will build on the foundation laid down by the CZMA, all in stride with the changing times, growing number of people, and limited resources available today. When it comes to the environment, rules and regulations sometimes can't do it all. Sometimes cooperative actions work better and we can turn to models that encourage joint conservation projects among folks who all want the same thing—sustainable coasts.

Partnership programs among federal government, state agencies, local governments, private landowners and nonprofits, like the ACE Basin Project, work and we need to encourage these partnerships in all our coastal areas if we are to prevent degradation of our coastal resources. The good news is that we can make a difference today by providing the funding for land conservation partnerships provided for by the Coastal and Estuarine Land Protection Act. I am proud to be a sponsor of this bill, which will not only improve the quality of the coastal areas and marine life it supports, but also sustain surrounding communities and their way of life.

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. 861

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 ''Coastal and Estuarine Land Protection Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Coastal and estuarine areas provide important nursery habitat for two-thirds of the nation's commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and pollutant filtration.

(2) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) recognizes the national importance of these areas and their ecological vulnerability to anthropogenic activities by establishing a comprehensive Federal-State partnership for protecting natural reserves and managing growth in these areas.

(3) The National Estuarine Research Reserve system established under that Act relies on the protection of pristine designated areas for long-term protection and for the conduct of education and research critical to the protection and conservation of coastal and estuarine resources.

(4) Intense development pressures within the coastal zone are driving the need to provide coastal managers with a wider range of tools to protect and conserve important coastal and estuarine areas.

(5) Protection of undeveloped coastal lands through the acquisition of interests in property from a willing seller are a cost-effective means of providing these areas with permanent protection from development.

(6) Permanent protection of lands in the coastal zone is a necessary component of any program to maintain and enhance coastal and estuarine areas for the benefit of the Nation, including protection of water quality, access to public beachfront, conserving wildlife habitat, and sustaining sport and commercial fisheries.

(7) Federal-State-nongovernmental organization pilot land acquisition projects have already substantially contributed to the long-term health and viability of coastal and estuarine systems.

(8) Enhanced protection of estuarine and coastal areas can be attained through watershed-based acquisition strategies coordinated through Federal, State, regional, and local efforts.

SEC. 3. ESTABLISHMENT OF COASTAL AND ESTUARINE LAND PROTECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Commerce shall establish a Coastal and Estuarine Land Protection Program, in cooperation with appropriate State, regional, and other units of government for the purposes of protecting the environmental integrity of important coastal and estuarine areas, including wetlands and forests, that have significant conservation, recreation, ecological, historical, or aesthetic values, and that are threatened by conversion from their natural, undeveloped, or recreational state to other uses. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal States, except coastal States that have lost less than 1 percent of their wetlands to development or conversion to other land uses by the date of enactment of this Act, with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

(1) a Coastal Zone Management Plan or Program approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); or

(2) a National Estuarine Research Reserve management plan; or

(3) a regional or State watershed protection plan involving coastal States with approved coastal zone management plans.

(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal States or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the State's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the establishment and implementation of this Act (if different from the coastal zone management program).

(2) Each participating State shall identify priority conservation needs within the State, the values to be protected by inclusion of lands of the program, and the threats to those values that should be avoided.

(3) Each participating State shall evaluate how the acquisition of property or easements might impact working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the programs, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) Applications must be determined to be consistent with the State's or territory's approved coastal zone plan, program and policies prior to submittal to the Secretary.

(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological or watershed protection value.

(8) In developing guidelines under this section, the Secretary shall consult with other Federal agencies and non-governmental entities expert in land acquisition and conservation procedures.

(9) Eligible States or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 306A(e) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a) and may acquire lands in cooperation with nongovernmental entities and Federal agencies.

(10) The Secretary shall develop performance measures that will allow periodic evaluation of the program's effectiveness in meeting the purposes of this section and such evaluation shall be reported to Congress.

(d) MATCHING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

(2) MAXIMUM FEDERAL SHARE.—

(A) 75 PERCENT FEDERAL FUNDS.—No more than 75 percent of the funding for any grant under this section shall be derived from Federal sources, unless such requirement is specifically waived by the Secretary.

(B) WAIVER OF REQUIREMENT.—The Secretary may grant a waiver of the limitation in subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate.

(3) OTHER FEDERAL FUNDS.—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources

may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(4) SOURCE OF MATCHING COST SHARE.—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

(A) Land value may be used as non-Federal match if the lands are identified in project plans and acquired within three years prior to the submission of the project application or after the submission of a project application until the project grant is closed (not to exceed 3 years). The appraised value of the land at the time of project closing will be considered the non-Federal cost share.

(B) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award. These costs may include either case or in-kind contributions.

(e) REGIONAL WATERSHED DEMONSTRATION PROJECT.—The Secretary may provide up to $5,000,000 for a regional watershed protection demonstration project that will meet the requirements of this section, and—

(1) leverages land acquisition funding from other Federal land conservation or acquisition programs such that other Federal contributions, at a minimum, equal the amounts provided by the Secretary;

(2) involves partnerships from a broad spectrum of Federal, State, and non-governmental entities;

(3) provides for the creation of conservation corridors and preservation of unique coastal habitat;

(4) protects largely unfragmented habitat under imminent threat of development or conversion;

(5) provides water quality protection for areas set aside for research under the National Estuarine Research Reserve program; and

(6) provides a model for future regional watershed protection projects.

(f) RESERVATION OF FUNDS FOR NATIONAL ESTUARINE RESEARCH RESERVE SITES.—No less than 15 percent of funds made available under this section shall be available for acquisitions benefiting National Estuarine Research Reserve acquisitions.

(g) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2004, fiscal year 2005, and triennially thereafter.

(h) TITLE AND MANAGEMENT OF ACQUIRED PROPERTY.—

(1) IN GENERAL.—If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide such assurances as the Secretary may require that—

(A) the title to the property will be held by the grant recipient or other appropriate public agency designated by the recipient in perpetuity;

(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the correct value will be returned to the Secretary, for re-distribution in the grant process.

(2) CONSERVATION EASEMENT.—In this subsection, the term ''conservation easement'' includes an easement, recorded deed, or interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this Act except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

(d) DEFINITIONS.—In this section, the term ''coastal State'' has the meaning given that term by section 304(4) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(4)), and any other term used in this section that is defined in section 304 of that Act has the meaning given that term in that section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary—

(1) $60,000,000 for each of fiscal years 2004 through 2007 to carry out this section (other than subsection (e)); and

(2) $5,000,000 for fiscal year 2004 to carry out subsection (e), such sum to remain available without fiscal year limitation.

SEC. 4. ASSISTANCE FROM OTHER AGENCIES.

Section 310(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456c(a)) is amended by striking ''any qualified person for the purposes of carrying out this subsection.'' and inserting ''any other Federal agencies (including interagency financing of Coastal America activities) and any other qualified person for the purposes of carrying out this section.''.

Mr. GREGG. Mr. President, I rise today along with Senator HOLLINGS to introduce the Coastal and Estuarine Land Protection Act. We are introducing this much needed coastal protection act along with Senators KERRY, SNOWE, INOUYE, REED, BREAUX, DEWINE, SARBANES, BIDEN, KENNEDY, MIKULSKI, COCHRAN, MURRAY, CORZINE, COLLINS, DODD, LEVIN, NELSON, WYDEN, LIEBERMAN, FEINSTEIN, LAUTENBERG, CANTWELL, and CHAFEE. In addition, this legislation is supported by the Trust for Public Land, the Coastal States Organization, the Nature Conservancy, International Association of Fish and Wildlife Agencies, American Sportfishing Association, and the Land Trust Alliance.

The Coastal and Estuarine Land Protection Act promotes coordinated land acquisition and protection efforts in coastal and estuarine areas by fostering partnerships between non-governmental organizations and Federal, State, and local governments. With Americans rapidly moving to the coast, pressures to develop critical coastal ecosystems are increasing. There are fewer and fewer undeveloped and pristine areas left in the Nation's coastal and estuarine watersheds. These areas provide important nursery habitat for two-thirds of the Nation's commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and pollutant filtration.

The Coastal and Estuarine Land Protection Act pairs willing sellers through community-based initiatives with sources of Federal funds to enhance environmental protection. Lands can be acquired in full or through easements, and none of the lands purchased through this program would be held by the Federal Government. This bill puts land conservation initiatives in the hands of state and local communities. This new program, authorized through the National Oceanic and Atmospheric Administration at $60,000,000 per year, would provide Federal matching funds to States with approved coastal management programs or to National Estuarine Research Reserves through a competitive grant process. Federal matching funds may not exceed 75 percent of the cost of a project under this program, and non-Federal sources may count in-kind support toward their portion of the cost share.

This coastal land protection program provides much needed support for local coastal conservation initiatives throughout the country. In my role on the Commerce, Justice, State Appropriations Subcommittee, I have been able to secure significant funds for the Great Bay estuary in New Hampshire. This estuary is the jewel of the seacoast region, and is home to a wide variety of plants and animal species that are particularly threatened by encroaching development and environmental pollutants. By working with local communities to purchase lands or easements on these valuable parcels of land, New Hampshire has been able to successfully conserve the natural and scenic heritage of this vital estuary.

Programs like the Coastal and Estuarine Land Protection Program will now enable other States to participate in these community-based conservation efforts in coastal areas. This program was modeled after the U.S. Department of Agriculture's successful Forest Legacy Program, which has conserved millions of acres of productive and ecologically significant forest land around the country.

I welcome the opportunity to offer this important legislation, with my close friend, Senator HOLLINGS. I am thankful for his strong leadership on this issue, and look forward to working with him to make the vision for this legislation a reality, and to successfully conserve our coastal lands for their ecological, historical, recreational, and aesthetic values.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, Ms. COLLINS, Mr. LEVIN, and Mr. JOHNSON):

S. 862. A bill to promote the adoption of children with special needs; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Adoption Equality Act of 2003. I am proud to have a bipartisan group of cosponsors including Senators DEWINE, LANDRIEU, COLLINS, LEVIN and JOHNSON. Work on this legislation is based on the bipartisan work of the Senate coalition that supported the 1997 Adoption and Safe Families Act, an historic effort to ensure that a child's safety and health are paramount, and that every child should have a permanent home.

The Adoption and Safe Families Act was the most sweeping and comprehensive piece of child welfare legislation passed in over a decade, and since its enactment, adoptions from our foster care system have nearly doubled. In my State of West Virginia, adoptions have nearly tripled. Those adopted children now have a permanent home. But there are still 131,000 in foster care nationwide who have the goal of adoption but are still waiting. In West Virginia, we have 520 children in foster care waiting for adoption, but only 343 children might qualify for support. I believe each child with special needs who is waiting for adoption deserves help but under current law only some do. They are the innocent ones who were victims of abuse and neglect. Clearly we must do more for those children.

Throughout the process of developing the Adoption Act we heard about the challenging circumstances facing children described as having ''special needs''. These include children who are the most difficult to place into permanent homes, often due to their age, disability or status as part of a group of siblings needing to be placed together.

One of the most significant provisions of ASFA was the assurance of ongoing health care coverage for all children with special needs who move from foster care to adoption. Parents willing to adopt such children were promised health care coverage in 1997 which is essential.

While all special needs children that are adopted maintain health care coverage, only half are eligible for adoption assistance payments. Current law provides for the payment of federal adoption subsidies to families who adopt only those special needs children whose biological family would have qualified for welfare benefits under the old 1996 AFDC standards. Federal adoption subsidy payments provide essential income support to help families finance the daily basic costs of raising these special children, as well as support for special services like therapy, tutoring, or special equipment for disabled children. Federal adoption subsidies are a vital link in securing adoptive homes for special needs children who by definition would not be adopted without support.

Under current law, a child's eligibility for these important benefits is dependent on the income of his or her biological parents even though these parents' legal rights to the child have been terminated, and these are the parents who either abused or neglected the child. This is, simply, wrong. The Adoption Equality Act will eliminate this anomaly in Federal law by making all special needs children eligible for Federal adoption subsidies.

The Adoption Equality Act is the next logical step to streamline and promote adoptions from foster care. The bill is designed to ''level the playing field'' by ensuring that all children with special needs, and the loving families who adopt them, have the support they need to grow and develop.

First, the bill removes the requirement that an income eligibility determination be made in regard to the child's biological parents, whom the child is leaving, thereby allowing Federal adoption subsidy to be paid to all families who adopt children who meet the definition of special needs.

Second, the bill continues to give states flexibility to determine the definition of a child with special needs, but it is clear that adoption subsidies should only be provided if the child could not be adopted without such assistance.

Third, the bill requires that States reinvest the monies they save as a result of this bill back into their state child abuse and neglect programs which should help promote prevention and family support.

When we talk about how to help abused and neglected children in this country, many complex questions are raised about what constitutes best policy, and how Federal tax dollars should be spent. Yet, at the heart of all the questions are vulnerable children who desperately want a safe, permanent home. The lack of modest financial resources to support these adoptions is often the only barrier that stands between an abused child and a safe, loving and permanent home.

Federal adoption subsidies are designed to encourage adoption of children with special needs—those children who have the hardest time finding permanent, adoptive families. It is an absurd policy to discriminate against thousands of children with special needs based upon the income of their biological, and often abusive, parents. It is time to create a Federal policy that levels the playing field and gives all children with special needs an equal and fair chance at being adopted.

The Adoption Equality Act will treat every special needs child the same. It is designed to encourage adoption and support those admirable parents willing to help a child with special needs and a history of abuse or neglect. Such children may have physical disabilities, or other may have emotional challenges due to past abuse and neglect. Such children and families often need special counseling or support services, and that is why the adoption assistance payments are key. If we want to truly help our most vulnerable children find a permanent home, this is a wise investment.

By Mr. EDWARDS (for himself, Mr. MILLER, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 863. A bill to amend the Higher Education Act of 1965 to allow soldiers to serve their country without being disadvantaged financially by Federal student aid programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. EDWARDS (for himself, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 864. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce two important pieces of legislation that offer a helping hand to the members and families of the National Guard, the Reserves, and the regular active-duty military.

The National Guard and Reserves used to be called ''forces of last resort,'' but they have become much more. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become a central element of our national defense.

We've come to rely on them to fight side-by-side with full-time active duty soldiers. Each time our Nation has needed them, the Guard and Reserves members have left their jobs, their homes, and their families to serve this nation with pride and distinction. They view activation as an opportunity for service, but the truth is that activation does cause challenges at home. We should do right by them.

Over the past few weeks, this body has considered a number of important measures for the Guard, the Reserves, and our entire military. I was pleased to support Senator LANDRIEU's amendment to raise combat and family separation pay and to modernize equipment. I also supported Senator LINCOLN's effort to make sure that all members of the National Guard and Reserves can participate in the same health program that's available to full-time soldiers and their families. It's hard to believe, but 20 percent of the men and women in the Guard and Reserves don't even have health insurance.

Today, I am introducing two new pieces of legislation to address unique difficulties facing Guard and Reserve members and, in fact, members of the regular military as well. I've traveled around the bases in my State and, time and time again, soldiers and their families have told me they need help.

My first proposal is for child care. A few weeks ago, I outlined my ideas for addressing the growing challenges facing working families. Parents are working longer hours, earning less, and spending less time with their kids. One idea I offered was expanding after-school programs for kids of working parents.

The child care crunch is enormously exacerbated for military families. When one parent is called away, the other must take on all the responsibilities around the home. And at the same time, many members of the Guard and

Reserves take a pay cut, making it more difficult to hire help.

Families can get child care on a military base, which is great for some families. But members of the Guard in North Wilkesboro, for example, live 173 miles away from the nearest military installation. Those families are totally left out.

My National Guard and Reserves Child Care Relief Act would give families financial help for child care in their hometown. We would help families with a mom or dad called away on active duty. This is a concrete, practical way to make a difference in people's lives.

I also have a bill to provide some help paying for education for the men and women who serve our country in the military. Nearly a quarter of Guardsmen and Reservists are college students, and many more are graduates with student loans.

While these patriots are fighting for their country overseas, we charge them interest on their student loans here at home. This happens even if they're serving on the frontlines in Iraq; even if they took a huge pay cut because they're in the Guard or Reserves; even if they have a very low income to begin with.

For somebody with an average size loan of $17,000, this can add up to as much as $1,400 in interest a year. That's not right. No one should return to civilian life deeper in debt because they took time off to serve their country. We should waive the interest on these Federal loans.

The Secretary of Education has the authority to waive interest under the HEROES Act of 2001, but he has chosen not to exercise it. My Fairness for America's Soldiers in Higher Education Act would require him to do just that.

It would also permanently end an Education Department policy-suspended during the current conflict—that makes many guardsmen and reservists who have to drop college courses when they are activated pay back student aid.

As we consider trillion-dollar budgets, these are modest ideas, but they would make a real difference in the lives of Americans serving their country and signal our appreciation for their sacrifice.

I urge my colleagues to support these important bills. I ask unanimous consent that the text of the bills be printed in the RECORD.

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

S. 863

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 ''Fairness for America's Soldiers in Higher Education Act of 2003''.

SEC. 2. REFUND POLICY.

Section 484B(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1091b(b)(2)) is amended by adding at the end the following:

''(D) STUDENTS ON ACTIVE DUTY DURING A WAR OR NATIONAL EMERGENCY.—Notwithstanding subparagraphs (A), (B), and (C), a student who withdraws from an institution of higher education to serve on active duty during a war or national emergency shall not be required to repay any grant assistance that is otherwise required to be repayed under this section.''.

SEC. 3. DEFERMENT DURING ACTIVE DUTY.

(a) FFEL AND DIRECT SUBSIDIZED LOANS.—Section 428(b)(1)(M) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) in clause (ii), by striking ''or'' after the semicolon;

(2) in clause (iii), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iii) the following:

''(iv) during which the borrower—

''(I) is a member of a regular component on active duty during a war or during a national emergency declared by the President or Congress, and receives compensation described in section 112(a) of the Internal Revenue Code of 1986;

''(II) is on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12306, 12307, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law, during a war or during a national emergency declared by the President or Congress, regardless of the location at which such active duty service is performed; or

''(III) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 12402 of title 10, United States Code, or section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

(b) CONSOLIDATION LOANS.—Section 428C(b)(4)(C)(ii) of the Higher Education Act of 1965 (20 U.S.C. 1078–3(b)(4)(C)(ii)) is amended—

(1) in subclause (II), by striking ''or'' after the semicolon;

(2) in subclause (III), by striking ''or (II)'' and inserting '', (II) or (III)'';

(3) by redesignating subclause (III) (as so amended) as subclause (IV); and

(4) by inserting after subclause (II) the following:

''(III) by the Secretary, in the case of a consolidation loan of a student who is on an active duty deferment under section 428(b)(1)(M)(iv); or''.

(c) FFEL AND DIRECT UNSUBSIDIZED LOANS.—Section 428H(e) of the Higher Education Act of 1965 (20 U.S.C. 1078-8(e)) is amended by adding at the end the following:

''(C) Notwithstanding subparagraph (A), interest on loans made under this section for which payments of principal are deferred because the student is on an active duty deferment under section 428(b)(1)(M)(iv) shall be paid by the Secretary.''.

(d) PERKINS LOANS.—Section 464(c)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) in clause (iii), by striking ''or'' after the semicolon;

(2) in clause (iv), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iv) the following:

''(v) during which the borrower—

''(I) is a member of a regular component on active duty during a war or during a national emergency declared by the President or Congress, and receives compensation described in section 112(a) of the Internal Revenue Code of 1986;

''(II) is on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12306, 12307, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law, during a war or during a national emergency declared by the President or Congress, regardless of the location at which such active duty service is performed; or

''(III) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 12402 of title 10, United States Code, or section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower (within the meaning of section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after such date.

S. 864

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 ''National Guard and Reserves Child Care Relief Act''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $10,000,000 for each of fiscal years 2004 through 2008.''.

SEC. 3. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible persons to assist the persons in paying for the cost of child care services provided to dependents by eligible child care providers.

''(b) ELIGIBLE PERSON AND DEPENDENT.—In this section:

''(1) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(2) ELIGIBLE PERSON.—The term 'eligible person' means a person who—

''(A) is a parent of one or more dependents of—

''(i) a member of a reserve component of the Armed Forces serving on active duty for a period of more than 30 days in support of a military operation pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code; or

''(ii) any other member of the Armed Forces on active duty who, as determined by

the Secretary of the military department concerned, is involved in a military operation;

''(B) has the primary responsibility for the care of one or more such dependents; and

''(C) resides permanently at a location at least 50 miles from—

''(i) the nearest military installation of the Department of Defense where child care facilities and programs are available for use by dependents of the member; and

''(ii) the nearest child development center or family child care home that is funded in whole or in part with appropriations available to the Department of Defense and is available for use by dependents of the member.

''(3) MILITARY OPERATION.—The term 'military operation' means—

''(A) Operation Enduring Freedom;

''(B) Operation Iraqi Freedom;

''(C) Operation Noble Eagle; or

''(D) any successor operation of the United States Armed Forces to an operation named in subparagraph (A), (B), or (C).

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a person shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

SEC. 4. CONFORMING AMENDMENTS.

Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

By Mr. MCCAIN (for himself, Mr. DORGAN, Mr. BROWNBACK, and Mr. ENSIGN):

S. 865. A bill to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, today I am joined by Senators DORGAN, BROWNBACK, and ENSIGN in introducing the Commercial Spectrum Enhancement Act. This bill is designed to streamline the process of relocating government users from spectrum reallocated for commercial use.

The bill would establish a separate fund on the books of the United States Treasury called the Spectrum Relocation Fund. When spectrum occupied by a Federal agency is auctioned, the proceeds from the auction would be deposited into the fund. Federal agencies would be able to withdraw from the fund the estimated expenses associated with the relocation, with additional expenses being approved by the Office of Management and Budget, with notice provided to Congress and the General Accounting Office, GAO, as necessary.

Currently, when spectrum assigned to a Government agency is auctioned, the law requires the agency to negotiate with the winning bidder to determine the cost of purchasing or returning new equipment necessary for the agency to transfer out of the spectrum band. These negotiations would be time-consuming and difficult for both parties. This bill would eliminate the need for lengthy negotiations between these parties. Thus it would accelerate the pace of introduction of new services using the spectrum.

Spectrum is a critical resource of our armed services. It is important that any relocation process consider the needs of our military operations. I believe that this bill would allow our military to have confidence that its relocation costs will be fully and timely reimbursed, while providing commercial bidders with certainty regarding the full cost of the right to use the spectrum and the ability to use it in a timely fashion.

Finally, the bill provides important oversight functions for Congress and the GAO to ensure that the fund is used in a manner that is fair and justified. In this way, American taxpayers are assured that their resources are used most efficiently.

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

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

(The bill will be printed in a future edition of the RECORD.)

By Mr. KOHL (for himself, Mr. DURBIN, Mr. SCHUMER, Mr. CORZINE, Mrs. FEINSTEIN, Mr. REED, and Mr. LAUTENBERG):

S. 866. A bill to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun and provide safety standards for child safety locks; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Child Safety Lock Act of 2003, on behalf of myself, Senator DURBIN, Senator SCHUMER, Senator CORZINE, and Senator FEINSTEIN. Our measure will save children's lives by reducing the senseless tragedies that result when children get their hands on improperly stored and unlocked handguns.

Each year, children and teenagers are involved in more than 10,000 accidental shootings in which close to 800 of them die. In addition, each year more than 1,000 young people killed themselves with a firearm—that is almost three per day. Safety locks can be effective in deterring or preventing many of these incidents.

The sad truth is that we are inviting disaster every time an unlocked gun is stored in a place that is still accessible to children. Parents take a number of precautions to ensure their children's safety, from equipping them with bike helmets, to securing them in automobiles, to changing smoke detector batteries. Unfortunately, not all parents are as safety conscious about child proofing their firearms.

Guns are kept in 43 percent of American households with children. In 23 percent of these households, the guns are kept loaded. And alarmingly, in one out of every eight of those homes the loaded guns are left unlocked.

This is wrong and unacceptable.

Such startlingly cold statistics cannot even begin to describe in human terms the daily tragedies that could be prevented by the use of a safety lock.

For example, in January a 21-month-old little boy was fatally shot when he tipped over a laundry hamper containing a loaded handgun. The handgun did not have a lock. The boy had no supervision. The result was tragic. A lock would have also saved the life of a four-year-old in Florida who shot himself playing with his grandfather's gun while the rest of his family was sleeping. Last September, a Detroit mother lost her son because he accidentally shot himself with a gun she had borrowed to protect herself. And, of course, no one will ever forget the Santana High School shooting two years ago, when a high school freshman opened fire on his classmates, killing two and injuring 13 others with a handgun and multiple rounds of ammunition he found at home.

Our legislation will help prevent tragedies like these. It is simple, effective, and straightforward. It requires that a child safety device—or trigger lock—be sold with every handgun. These devices vary in form, but the most common resemble a padlock that wraps around the gun trigger and immobilizes it. Trigger locks can be purchased in virtually any gun store for less than ten dollars. They are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use and have surely saved many lives.

Protection is only as good as the safety lock itself, therefore the Child Safety Lock Act of 2003 includes standards for the safety locks. Studies by the Consumer Product Safety Commission and recalls by safety lock manufacturers conclusively demonstrate the child safety locks are often not made well enough. A lock that is easily picked or one that breaks apart with little force defeats the purpose of this bill. We would not use a lock that is less than foolproof to guard our most valuable possessions. We should not use defective locks to protect what is most valuable to us—our children.

Support for this simple, common sense proposal is widespread. In 1999, a child safety lock provision passed the Senate by an overwhelming vote of 78 to 20 as an amendment during the juvenile justice debate. This proposal is as popular with the rest of the country

and the law enforcement community as it was with the 106th Senate. Polls show that between 75 and 80 percent of the American public, including gun owners, favor the mandatory sale of child safety locks with guns. When I surveyed almost 500 of Wisconsin's police chiefs and sheriffs last summer, 90 percent of respondents agreed that child safety locks should be sold with each gun.

During his campaign, President Bush indicated that if Congress passes a bill making child safety locks mandatory he would sign it into law. Two years ago, Attorney General Ashcroft affirmed the Administration's support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

Mr. President, this legislation is necessary to ensure that safety locks are provided with all handguns so that numerous lives are not lost in easily preventable accidents. We already protect children by requiring that seat belts be installed in all automobiles and that childproof safety caps be provided on medicine bottles. We should be no less vigilant when it comes to gun safety. I hope that the Senate will move to pass the Child Safety Lock Act of 2003 so that further unnecessary death and injury can be avoided.

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

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

S. 866

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Safety Lock Act of 2003''.

SEC. 2. REQUIREMENT OF CHILD HANDGUN SAFETY LOCKS.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) The term 'locking device' means a device or locking mechanism that is approved by a licensed firearms manufacturer for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

''(A) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

''(B) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

''(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.''.

(b) UNLAWFUL ACTS.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) LOCKING DEVICES.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than a licensed manufacturer, licensed importer, or licensed dealer, unless the transferee is provided with a locking device for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State or a department, agency, or political subdivision of a State, of a firearm;

''(B) transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty); or

''(C) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty).''.

(2) EFFECTIVE DATE.—Section 922(z) of title 18, United States Code, as added by this subsection, shall take effect 180 days after the date of enactment of this Act.

(c) LIABILITY; EVIDENCE.—

(1) LIABILITY.—Nothing in this section shall be construed to—

(A) create a cause of action against any firearms dealer or any other person for any civil liability; or

(B) establish any standard of care.

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO LOCKING DEVICES.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensee, the Attorney General may, after notice and opportunity for hearing—

''(i) suspend or revoke any license issued to the licensee under this chapter; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $10,000.

''(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.''.

SEC. 3. AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.

(a) IN GENERAL.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

''SEC. 39. CHILD HANDGUN SAFETY LOCKS.

''(a) ESTABLISHMENT OF STANDARD.—

''(1) RULEMAKING REQUIRED.—

''(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(E), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Lock Act of 2003 to establish a consumer product safety standard for locking devices. The Commission may extend the 90-day period for good cause.

''(B) FINAL RULE.—Notwithstanding any other provision of law, including chapter 5 of title 5, United States Code, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which it initiated the rulemaking. The Commission may extend that 12-month period for good cause.

''(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect 6 months after the date on which the final standard is promulgated.

''(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—

''(i) are sufficiently difficult for children to de-activate or remove; and

''(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.

''(2) INAPPLICABLE PROVISIONS.—

''(A) PROVISIONS OF THIS ACT.—Sections 7, 9, and 30(d) shall not apply to the rulemaking proceeding described under paragraph (1). Section 11 shall not apply to any consumer product safety standard promulgated under paragraph (1).

''(B) CHAPTER 5 OF TITLE 5.—Except for section 553, chapter 5 of title 5, United States Code, shall not apply to this section.

''(C) CHAPTER 6 OF TITLE 5.—Chapter 6 of title 5, United States Code, shall not apply to this section.

''(D) NATIONAL ENVIRONMENTAL POLICY ACT.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321) shall not apply to this section.

''(b) NO EFFECT ON STATE LAW.—

''(1) IN GENERAL.—Notwithstanding section 26, this section shall not annul, alter, impair, affect, or exempt any person subject to the provisions of this section from complying with any provision of law of any State or any political subdivision thereof, except to the extent that such provisions of State law are inconsistent with any provision of this section, and then only to the extent of such inconsistency.

''(2) CLARIFICATION.—A provision of State law is not inconsistent with this section if such provision affords greater protection to children from handguns than is afforded by this section.

''(c) ENFORCEMENT.—Notwithstanding subsection (a)(2)(A), the consumer product safety standard promulgated by the Commission pursuant to subsection (a) shall be enforced under this Act as if it were a consumer product safety standard described under section 7(a).

''(d) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) CHILD.—The term 'child' means an individual who has not attained the age of 13 years.

''(2) LOCKING DEVICE.—The term 'locking device' has the meaning given that term in clauses (i) and (iii) of section 921(a)(36) of title 18, United States Code.''.

(b) CONFORMING AMENDMENT.—Section 1 of the Consumer Product Safety Act is amended by adding at the end of the table of contents the following:

''Sec. 39. Child handgun safety locks.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Consumer Product Safety Commission $2,000,000 to carry out the

provisions of section 39 of the Consumer Product Safety Act, as added by this Act.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

By Mr. BURNS:

S. 867. A bill to designate the facility of the United States Postal Service located at 710 Wick Lane in Billings, Montana, as the ''Ronald Reagan Post Office Building''; to the Committee on Governmental Affairs.

Mr. BURNS. Mr. President, I would like to introduce a bill which names one of our post offices in Billings, Montana, after one of this Nation's greatest leaders and true patriot: former President Ronald Reagan. His legacy extends far beyond his Presidency. I think it's only fitting that I introduce this legislation today, since President Reagan worked tirelessly to end the Cold War and liberate millions of people, and we see the same dedication today to free the people of Iraq. President Reagan spoke about the threat of Saddam Hussein, and asked, ''will we be ready to respond?'' He went on to answer this question by saying, ''In the end, it all comes down to leadership. This is what this country is looking for now. It was leadership here at home that gave us strong American influence abroad and the collapse of imperial communism. Great nations have responsibilities to lead and we should always be cautious of those who would lower our profile because they might just wind up lowering our flag.'' He made these comments not two weeks ago, and not even two months ago. President Reagan, already sensitive to the threat posed by Saddam Hussein, asked this rhetorical question in 1994. This foresight was evident during President Reagan's tenure in the White House. President Reagan played a significant role in framing the modern political landscape, and I am proud to do what I can to commemorate his contribution to America and the world. I can clearly remember President Reagan's visit to Big Sky Country in 1982 for the Centennial celebration for Billings and Yellowstone County. He arrived in the Billings Metra Arena, one of the largest venues in the State, riding in a stagecoach. He embraced the ideals that Montana stood for, and said he was trying to bring a little of it to Washington. I feel much the same way as President Reagan did when he said, ''What we're trying to do in Washington is reawaken the government to the very values that you here in Billings represent—determination, responsibility, confidence, and common sense—the kind of common sense that says if it ain't broke, don't fix it. We are reintroducing the idea that progress is still an American word and that optimism is still an American trait. I believe if we cling to our hopes and dreams, I believe the future will flower just as it did for the founders of Billings, Montana.'' Now more than ever, we need to remember that ''progress'' and ''optimism'' are part of the American vocabulary. The wisdom of President Reagan helped guide us in the right direction, and I am pleased and honored to introduce this legislation today so that we may dedicate a piece of Montana to a great visionary and statesman.

By Mr. SMITH:

S. 868. A bill to amend the Coos, Lower Umpqua, and Siuslaw Restoration Act to provide for the cultural restoration and economic self-sufficiency of the Confederation Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, and for other purposes; to the Committee on Indian Affairs.

Mr. SMITH. Mr. President, I rise today to introduce legislation that will restore to the members of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians a small portion of their ancestral homelands.

The story of these Tribes' experience is well worth hearing. For many of my colleagues, parts of it will sound familiar, as it reflects the history of the early west. In 1850, gold was discovered at a place known as Eight Dollar Bar, near what we now call Cave Junction, OR. Within months thousands of miners with gold fever moved into the area. Indians struggled to protect their land while miners aggressively pursued their vision of the American dream.

In 1855, Joel Palmer, an Indian Agent for the Oregon Territory was sent in by the Federal Government to negotiate treaties with Oregon tribes. Treaties with the tribes of the Rogue River, Umpqua/Cow Creek, and Calapooyas were established, but not the tribes of the central and southern Oregon coast. Much of this land is now in the Siuslaw National Forest.

The Coos, Lower Umpqua and Siuslaw Indians were not a warring people. They were prepared to share their ancestral homelands, which approximated about 1.6 million acres in the coast mountain range, living on a small portion of the land and receiving compensation for the balance. In 1855 and in good faith the tribes signed the Empire Treaty with the Federal Government. But, somewhere between Empire, Oregon and the floor of the U.S. Senate the treaty was lost. No land was allotted for their reservation and no compensation given.

In 1856 the Rogue River War began and the Coos, Lower Umpqua and Siuslaw Indians were marched north and held prisoner in what was called the Coast Reservation. They were held against their will until the mid-1870s. It was during this dark period in their history that over half their population died.

With their release, tribal members returned to their homelands, only to find they had neither land nor resources left. At this point, the three tribes formed a Confederation. In 1954, by Presidential order the Confederation's tribal status was terminated. These decades were difficult ones for members of this Tribe. Lack of education and economic opportunities in the area, and racism by some of their white neighbors took a heavy toll.

In 1984, the Oregon congressional delegation sought and achieved federal recognition for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. At the same time, no reservation lands were granted to the tribe and no compensation offered. The Tribe received a donation of approximately 6 acres in Empire, Oregon. This is now the site of their tribal hall where services are provided to their members and tribal council meetings and tribal events are held. Small, additional tracts have been purchased over time.

The Indian Self-Determination Act encourages tribes to develop plans to achieve the goals of cultural restoration, economic self-sufficiency and attain the standard of living enjoyed by other citizens of the United States. The Confederated Tribes have been working diligently since 1954 to attain those goals.

An essential component in this effort is the Reservation Plan and Forest Land Restoration Proposal. It will provide a long-term source of revenue and lessen dependence on federal funding to operate Tribal government programs and to provide economic benefits to local communities. The Plan will revitalize Tribal culture by reconnecting Tribal people to their ancestral homelands and it will provide a net benefit to the environment by improving the health of ancestral watersheds.

My staff and I began meeting with Tribal members soon after I was first elected to the Senate. Years of work with local citizens, communities and governments to gain understanding and support for the land restoration proposal have been successful. Hundreds of individual meetings, workshops and open forums have been held by the Tribes. Development of the Reservation Plan and Forest Land Restoration Proposal has led to a clear understanding of what activities can occur on these lands which is reflected in the legislation that I have introduced today.

I am proud to introduce legislation today that will return approximately 63,000 acres of their ancestral homeland to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. These U.S. Forest Service lands encompass a portion of the Siuslaw National Forest. Under the legislation, management of the restored lands would be transferred to the Bureau of Indian Affairs with title held in trust by the Secretary of the Interior for the Confederated Tribes.

These lands contain significant cultural sites: encampments, spiritual and burial sites. My proposal will allow these people to meet their cultural goals, and provide economic and environmental benefits to all of the citizens of the region. The legislation ensures continued public access to these lands for hunting and fishing, recreation and transportation. Applicable

State and Federal laws will be followed. Payments to county governments will not be impacted under this proposal. Timber harvested from this land will be processed domestically by local mills. Twenty percent of the revenues from the land will be reinvested in watershed management activities to restore habitat. These lands contain some significant environmental sites. They will be preserved. These lands are not suitable for nor will the laws allow gaming to occur on them.

Revenue gained from activities on these lands will help meet the self-sufficiency goals of the Confederated Tribes. It will be used to assist seniors through elder housing programs, youth through scholarships, low income housing for those in need and provide health care benefits for all of the Tribal members.

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw are the only federally recognized tribe in Oregon that has never received any land or compensation for the loss of their homeland from the United States Government. This legislation works to right that wrong, to restore a Tribe, to restore a forest, and to restore a very special relationship between the two.

By Mr. HARKIN (for himself, Ms. SNOWE, Mr. INOUYE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Mr. CORZINE, Mr. BIDEN, Mr. SPECTER, Ms. LANDRIEU, Mr. JOHNSON, Mrs. LINCOLN, Mr. HOLLINGS, Ms. MIKULSKI, Mrs. CLINTON, and Ms. COLLINS):

S. 869. A bill to amend title XVIII of the Social Security Act to provide for enhanced reimbursement under the medicare program for screening and diagnostic mammography services, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President. Today I am introducing legislation, the Assure Access to Mammography Act of 2003, on behalf of myself and my colleagues, Senators SNOWE, INOUYE, GRAHAM of South Carolina, MURRAY, CORZINE, BIDEN, SPECTER, LANDRIEU, JOHNSON, LINCOLN, HOLLINGS, MIKULSKI, CLINTON, and Ms. COLLINS to ensure women have full and timely access to preventive breast cancer screenings. As you know, the earlier a woman is diagnosed with breast cancer, the earlier she can begin to receive treatment and the more likely she will survive.

Unfortunately, due to inadequate reimbursement rates for mammograms, women increasingly are having problems getting the mammograms they need. Across the nation, there have been reports of women waiting up to six months for an appointment for this simple procedure. While mammograms often cost up to $150 to administer, Medicare's reimbursement rate is currently set at about $82, barely over half the actual cost of the procedure. This disparity increasingly makes access a real problem, forcing many private centers to shut down and creating a shortage of providers willing to provide services significantly below cost.

The Assure Access to Mammography Act would reverse this growing and alarming trend by correcting the two primary causes of the problem. First, it would increase Medicare reimbursement to radiologists to a reasonable level to ensure health care providers are reimbursed fairly for mammography services. Second, the bill would increase the number of radiologists by increasing the Graduate Medical Education payments to provide for three additional radiologists in each teaching hospital. Finally, the Assure Access to Mammography Act would provide a MEDPAC study on the Medicare reimbursement structure for gender specific medical procedures so that Congress and CMS have the tools we need to make appropriate health policy decisions.

This is an issue that hits close to home for me. Both of my sisters died of breast cancer, at a time when mammograms were not readily available. While imperfect, mammograms are the best-known way to diagnose breast cancer at an early stage in order to reduce mortality. As our society ages, one million additional women each year are needing regular mammograms. The Assure Access to Mammography Act will provide the resources our health care system needs to guarantee all women access to the mammograms they need to ensure that breast cancer is detected early enough to apply appropriate treatments effectively. I look forward to working with my colleagues to pass this needed bipartisan legislation.

By Mr. BIDEN (for himself, Mr. LUGAR, Mr. KENNEDY, Mr. HAGEL, Mr. DOMENICI, and Mr. FEINGOLD):

S. 871. A bill to provide for global pathogen surveillance and response, to the Committee on Foreign Relations.

Mr. President, I am pleased to re-introduce today the ''Global Pathogen Surveillance Act''.

Last year, this bill passed the Senate by unanimous consent on August 1st, but died when the House of Representatives failed to take timely action.

The Global Pathogen Surveillance Act authorizes $150 million over the next two years to help developing nations improve global disease surveillance.

That will go a long way to prevent and contain both biological weapons attacks, if, God forbid, it happens, and naturally occurring infectious disease outbreaks around the world.

I'm happy to announce that Senators LUGAR, KENNEDY, HAGEL, DOMENICI, and FEINGOLD are joining me in co-sponsoring this bill.

The mysterious global outbreak of severe acute respiratory syndrome, or SARS, is an unfortunate reminder of why this bill is so important. We've heard a lot about it. We don't know much about it yet.

We know it's a contagious respiratory illness which apparently originated in the Guangdong province of China last November, has stricken more than 2600 individuals in 17 countries, taking the lives of at least 100 individuals.

The World Health Organization is concerned. They've issued a rare global health alert and discouraged travel to certain nations as authorities struggle to determine the cause of this flu-like illness and what viral or infectious agent is involved.

The WHO has not ruled out bioterrorism as a potential cause for the epidemic, although it is unlikely that a disease with only a 4 to 5 percent mortality would be used.

What's so scary about this outbreak is that doctors and nurses taking care of sick patients have fallen ill themselves; initial tests have not revealed evidence of infection with any previously known virus or bacterial agent; and patients are not being cured by standard treatments, although the vast majority do recover.

How would better disease surveillance have helped in dealing with this kind of crisis?

Experts suspect this epidemic first originated in the Guangdong province in southern China in November, but peaked in early February.

A comprehensive surveillance network might have picked up the unique symptoms of this epidemic earlier . . . might have led to quicker diagnosis and better containment measures.

We would have had a better chance to keep this epidemic contained within China, before the pathogen spread to neighboring nations, and now to Canada and the United States.

Over the last eighteen months, Americans have become all too familiar with the threat of bioterrorism and the army of deadly agents capable of spreading death and disease—anthrax, Ebola, and smallpox are only the most sensational examples.

We've had to strengthen our homeland defenses—not just against terrorists armed with bombs and explosives—but against shadowy figures carrying vials of deadly pathogens.

But all in all, this country is making important advances on the domestic front in bioterrorism defense.

Last year, the President signed into law the Bioterrorism Prevention Act of 2002, a comprehensive domestic initiative co-sponsored by Senators Kennedy and Frist.

In January, the Centers for Disease Control announced an initiative to establish electronic surveillance systems in eight American cities as the cornerstone of an eventual national network.

In Delaware, we're developing the very first, comprehensive, state-wide electronic reporting system for infectious diseases.

It'll serve as a prototype for other states by enabling much earlier detection of infectious disease outbreaks.

But a domestic defense against biological weapons isn't sufficient alone.

Biological weapons are a global threat with no respect for borders. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours.

A terrorist group could launch a biological weapons attacks in Mexico in the expectation that the epidemic would quickly spread to the United States.

A rogue state might experiment with new disease strains in another country, intending later to release them here.

And international trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another.

We should make no mistake: in today's world, all infectious disease epidemics, wherever they occur and whether they are deliberately engineered or are naturally occurring, are a potential threat to all nations, including the United States. Such a threat need not begin in the United States to reach our shores.

For that reason, our response cannot be limited to the United States alone.

Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

Why is disease surveillance so important? A biological weapons attack succeeds partly through the element of surprise.

As Dr. Alan P. Zelicoff of the Sandia National Laboratory testified before the Senate Foreign Relations Committee last spring, early warning of a biological weapons attack can prevent illness and death in all but a small fraction of those infected.

A cluster of flu-like symptoms in a city or region may be dismissed by doctors as just the flu when in fact it may be anthrax, plague, or another biological weapon.

But armed with the knowledge that a suspicious epidemic has emerged, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat them.

Disease surveillance is a fancy phrase for a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses that can quickly alert doctors across a region that a suspicious disease outbreak has occurred.

Epidemiological specialists can then investigate and combat the outbreak.

And if it's a new disease or strain, we can begin to develop treatments that much earlier.

An effective disease surveillance system helps even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring.

Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease.

According to the World Health Organization, thirty new infectious diseases have emerged over the past thirty years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent.

The SARS epidemic is only the most recent such outbreak. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and working communications equipment to circulate information.

Even here, in the most advanced Nation in the world, many States and cities rely on old-fashioned pencil and paper methods of tracking disease patterns.

Thankfully, the comprehensive bioterrorism legislation enacted into law last year is beginning to correct that.

Now, it is vitally important that we extend these initiatives into the international arena.

In 2000, the World Health Organization established the first truly global disease surveillance system, the Global Alert and Response Network, to monitor and track infectious disease outbreaks everywhere.

The WHO has done an impressive job so far with this initiative, working on a shoestring budget. But this global network is only as good as its components—individual nations.

Unfortunately, developing nations—those nations most likely to experience rapid disease outbreaks—simply don't have the trained personnel, the laboratory equipment, or the public health infrastructure to do the job. . . to track evolving disease patterns or detect emerging pathogens.

According to a January 2000 report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention.

The World Health Organization reports that more than 60 percent of laboratory equipment in developing countries is either outdated or non-functioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints about flea infestation and a growing rat population was followed by a cluster of reports about patients exhibiting the symptoms of pneumonic plague.

But authorities were unable to connect the dots and warn people until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy $600 million.

Had the Indian authorities possessed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and avoided the panic that led to economically disastrous embargoes on trade and travel.

Thanks to improved surveillance, an outbreak of pneumonic plague in India last year was detected more quickly and contained with only few deaths—with no costly panic.

In short, developing nations are the weak links in any comprehensive global disease surveillance network.

Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It's for these reasons that I'm reintroducing the Global Pathogen Surveillance Act. This bill will authorize $150 million in FY 2004 and FY 2005 to strengthen the disease surveillance capabilities of developing nations.

First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques.

It offers enhances in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities.

Second, it provides assistance to developing nations to acquire basic laboratory equipment, including items as basic as microscopes, so they can quickly diagnose pathogens.

Third, it enables developing nations to obtain communications equipment to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO.

Again, we're not talking about fancy high-tech equipment, but basics like fax machines and internet-equipped computers.

Finally—to create a real incentive for nations to promptly report suspicious disease outbreaks and offer international health authorities prompt access—the bill gives preference to those countries that agree to let international health experts investigate any suspicious disease outbreaks.

If passed, the Global Pathogen Surveillance Act will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network.

It's an inexpensive and common sense solution to a problem of global proportions—the dual threat of biological weapons and naturally occurring infectious diseases.

Make no mistake—this bill will contribute to our homeland security. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

In a report released only last month on global infectious disease, the National Academies' Institute of Medicine said, ''The United States should

take a leadership role in promoting the implementation of a comprehensive system of surveillance for global infectious diseases that builds on the current global capacity of infectious disease monitoring.'' By introducing this bill, I hope that our nation can begin to assume that mantle of leadership in this critical area.

Let me close with an excerpt of testimony from a Foreign Relations Committee hearing held on September 5, 2001. Dr. D.A. Henderson, the man who spearheaded the successful international campaign to eradicate smallpox in the 1970's, most recently served as the principal advisor to Secretary of Health and Human Services Tommy Thompson in organizing the nation's defenses against bioterrorism.

Dr. Henderson, who at the time of the hearing was a private citizen, was very clear on the value of global disease surveillance: ''In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability.

A focus on international surveillance and on scientist-to-scientist communication will be necessary if we are to have an early warning about the possible development and production of biological weapons by rogue nations or groups.''

Dr. Henderson is exactly right. We cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security.

I ask unanimous consent that the text of the ''Global Pathogen Surveillance Act'' be printed in the RECORD.

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

S. 871

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 ''Global Pathogen Surveillance Act of 2003''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Bioterrorism poses a grave national security threat to the United States. The insidious nature of the threat, the likely delayed recognition in the event of an attack, and the underpreparedness of the domestic public health infrastructure may produce catastrophic consequences following a biological weapons attack upon the United States.

(2) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in another country can quickly spread to the United States. Given the realities of international travel, trade, and migration patterns, a dangerous pathogen released anywhere in the world can spread to United States territory in a matter of days, before any effective quarantine or isolation measures can be implemented.

(3) To effectively combat bioterrorism and ensure that the United States is fully prepared to prevent, diagnose, and contain a biological weapons attack, measures to strengthen the domestic public health infrastructure and improve domestic surveillance and monitoring, while absolutely essential, are not sufficient.

(4) The United States should enhance cooperation with the World Health Organization, regional health organizations, and individual countries, including data sharing with appropriate United States departments and agencies, to help detect and quickly contain infectious disease outbreaks or bioterrorism agents before they can spread.

(5) The World Health Organization (WHO) has done an impressive job in monitoring infectious disease outbreaks around the world, including the recent emergence of the Severe Acute Respiratory Syndrome (SARS) epidemic, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response network.

(6) The capabilities of the World Health Organization are inherently limited by the quality of the data and information it receives from member countries, the narrow range of diseases (plague, cholera, and yellow fever) upon which its disease surveillance and monitoring is based, and the consensus process it uses to add new diseases to the list. Developing countries in particular often cannot devote the necessary resources to build and maintain public health infrastructures.

(7) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting is based on symptoms and signs (known as ''syndrome surveillance''), enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national and regional health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telephone-based systems for early recognition and diagnosis of diseases.

(8) An effective international capability to monitor and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter terrorist use of biological weapons, as early detection will help mitigate the intended effects of such malevolent uses.

(b) PURPOSE.—The purposes of this Act are as follows:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(2) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based and other electronic syndrome surveillance systems, in addition to traditional epidemiology methods, so that they may better detect, diagnose, and contain infectious disease outbreaks, especially those due to pathogens most likely to be used in a biological weapons attack.

(3) To provide assistance to developing countries to purchase appropriate public health laboratory equipment necessary for infectious disease surveillance and diagnosis.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology, including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of United States Government public health professionals to international health organizations, regional health networks, and United States diplomatic missions where appropriate.

(6) To establish ''lab-to-lab'' cooperative relationships between United States public health laboratories and established foreign counterparts.

(7) To expand the training and outreach activities of overseas United States laboratories, including Centers for Disease Control and Prevention and Department of Defense entities, to enhance the disease surveillance capabilities of developing countries.

(8) To provide appropriate technical assistance to existing regional health networks and, where appropriate, seed money for new regional networks.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term ''eligible developing country'' means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(2) ELIGIBLE NATIONAL.—The term ''eligible national'' means any citizen or national of an eligible developing country who is eligible to receive a visa under the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term ''international health organization'' includes the World Health Organization and the Pan American Health Organization.

(4) LABORATORY.—The term ''laboratory'' means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term ''Secretary'' means the Secretary of State.

(6) SELECT AGENT.—The term ''select agent'' has the meaning given such term for purposes of section 72.6 of title 42, Code of Federal Regulations.

(7) SYNDROME SURVEILLANCE.—The term ''syndrome surveillance'' means the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators to track the emergence of a disease in a population.

SEC. 4. PRIORITY FOR CERTAIN COUNTRIES.

Priority in the provision of United States assistance for eligible developing countries under all the provisions of this Act shall be given to those countries that permit personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases on their territories, provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies in addition to international health organizations.

SEC. 5. RESTRICTION.

Notwithstanding any other provision of this Act, no foreign nationals participating in programs authorized under this Act shall have access, during the course of such participation, to select agents that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

SEC. 6. FELLOWSHIP PROGRAM.

(a) ESTABLISHMENT.—There is established a fellowship program (in this section referred to as the ''program'') under which the Secretary, in consultation with the Secretary of Health and Human Services, and, subject to the availability of appropriations, award fellowships to eligible nationals to pursue public health education or training, as follows:

(1) MASTER OF PUBLIC HEALTH DEGREE.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Centers for Disease Control and Prevention.

(2) ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.—Advanced public health training in epidemiology to be carried out at the Centers for Disease Control and Prevention (or equivalent State facility), or other Federal facility (excluding the Department of Defense or United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(b) SPECIALIZATION IN BIOTERRORISM.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a ''fellow'') may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) FELLOWSHIP AGREEMENT.—

(1) IN GENERAL.—In awarding a fellowship under the program, the Secretary, in consultation with the Secretary of Health and Human Services, shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

(A) will maintain satisfactory academic progress (as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the recipient's education or training);

(B) will, upon completion of such education or training, return to the recipient's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary in an international health organization; and

(C) agrees that, if the recipient is unable to meet the requirements described in subparagraph (A) or (B), the recipient will reimburse the United States for the value of the assistance provided to the recipient under the fellowship, together with interest at a rate determined in accordance with regulations issued by the Secretary but not higher than the rate generally applied in connection with other Federal loans.

(2) WAIVERS.—The Secretary may waive the application of paragraph (1)(B) and (1)(C) if the Secretary determines that it is in the national interest of the United States to do so.

(d) IMPLEMENTATION.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with any eligible developing country under which the country agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the country upon completion of his studies; and

(3) to certify to the Secretary when a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, with an explanation of how the requirement was met.

(e) PARTICIPATION OF UNITED STATES CITIZENS.—On a case-by-case basis, the Secretary may provide for the participation of United States citizens under the provisions of this section if the Secretary determines that it is in the national interest of the United States to do so. Upon completion of such education or training, a United States recipient shall complete at least five years of employment in a public health position in an eligible developing country or the World Health Organization.

SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND SYNDROME SURVEILLANCE.

(a) IN GENERAL.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to laboratory technicians and other public health personnel from eligible developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted in overseas facilities of the Centers for Disease Control and Prevention or in Overseas Medical Research Units of the Department of Defense, as appropriate. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

(b) TRAINING IN SYNDROME SURVEILLANCE.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, establish and support short training courses in-country (not in the United States) for public health personnel from eligible developing countries in techniques of syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) and other Internet-based tools. Training under this subsection may be conducted via the Internet or in appropriate facilities as determined by the Secretary. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT.

(a) AUTHORIZATION.—The President is authorized, on such terms and conditions as the President may determine, to furnish assistance to eligible developing countries to purchase and maintain public health laboratory equipment described in subsection (b).

(b) EQUIPMENT COVERED.—Equipment described in this subsection is equipment that is—

(1) appropriate, where possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used as a biological weapon;

(3) compatible with general standards set forth, as appropriate, by the World Health Organization and the Centers for Disease Control and Prevention, to ensure interoperability with regional and international public health networks; and

(4) not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, maintain, support, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.

(a) ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries for the purchase and maintenance of communications equipment and information technology described in subsection (b), and supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) COVERED EQUIPMENT.—Equipment (and information technology) described in this subsection is equipment that—

(1) is suitable for use under the particular conditions of the area of intended use;

(2) meets appropriate World Health Organization standards to ensure interoperability with like equipment of other countries and international health organizations; and

(3) is not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) ASSISTANCE FOR STANDARDIZATION OF REPORTING.—The President is authorized to provide, on such terms and conditions as the

President may determine, technical assistance and grant assistance to international health organizations to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(f) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, support, maintain, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.

(a) IN GENERAL.—Upon the request of a United States chief of diplomatic mission or an international health organization, and with the concurrence of the Secretary of State, the head of a Federal agency may assign to the respective United States mission or organization any officer or employee of the agency occupying a public health position within the agency for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by a Federal agency by reason of the detail of personnel under subsection (a) may be reimbursed to that agency out of the applicable appropriations account of the Department of State if the Secretary determines that the relevant agency may otherwise be unable to assign such personnel on a non-reimbursable basis.

SEC. 11. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.

(a) IN GENERAL.—Subject to the availability of appropriations, the Centers for Disease Control and Prevention and the Department of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers or the Department, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of those laboratories, especially with respect to the implementation of on-site training of foreign nationals and regional outreach efforts involving neighboring countries.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of overseas laboratories of the Centers or the Department under this section shall not—

(1) detract from the established core missions of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

SEC. 12. ASSISTANCE FOR REGIONAL HEALTH NETWORKS AND EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing regional health networks; and

(2) developing new regional health networks.

(b) EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional Foreign Epidemiology Training Programs in eligible developing countries.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (c), there are authorized to be appropriated $70,000,000 for the fiscal year 2004 and $80,000,000 for fiscal year 2005, to carry out this Act.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

(A) $50,000,000 for the fiscal year 2004 and $50,000,000 for the fiscal year 2005 are authorized to be available to carry out sections 6, 7, 8, and 9;

(B) $2,000,000 for the fiscal year 2004 and $2,000,000 for the fiscal year 2005 are authorized to be available to carry out section 10;

(C) $8,000,000 for the fiscal year 2004 and $18,000,000 for the fiscal year 2005 are authorized to be available to carry out section 11; and

(D) $10,000,000 for the fiscal year 2004 and $10,000,000 for the fiscal year 2005 are authorized to be available to carry out section 12.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, containing—

(A) a description of the implementation of programs under this Act; and

(B) an estimate of the level of funding required to carry out those programs at a sufficient level.

(2) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under paragraph (1).

By Mr. BINGAMAN:

S. 873. A bill to authorize funding for catalysis science and engineering research and development at the Department of Energy for fiscal years 2004 through 2009; and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill entitled the Department of Energy Catalysis Research and Development Act.

Catalysis is at the heart of fuels production in the petroleum and chemical industries. Catalytic converters help reduce emissions of cars. Catalysis can help reduce carbon dioxide from industrial plants, which can contribute to global warming. The science of catalysis can help our pharmaceutical industry by one day mimicking nature's enzymes which are nature's catalysts. The industries I just mentioned contribute $500 billion to our gross national product; they all rely on catalysis to produce new compounds as efficiently as possible.

The catalysis science program is one of the hidden gems at the Department of Energy's Office of Science. The Department supports over 60 percent of the catalysis research in the Federal Government. I feel it is important that our energy bill highlights its basic research, and recommends a steady increase in funding levels for it.

The bill seeks to help the Department meet what it called the ''grand challenge'' in catalytic chemistry. The ''grand challenge'' which this bill seeks to address is first, the ability to design, at the atom level, catalytic structures to control ''catalytic activity'', or the rate at which a chemical reaction proceeds. The second part of this ''grand challenge'' is to control the ''selectivity'' of a catalytic reaction, or the ability of a catalytic compound to precisely seek out other chemicals through which to start a reaction. To achieve this ''grand challenge'', this bill directs the Department to design new catalytic compounds using the latest advancements in scientific computing. Today's computers are rapidly approaching a point where we can model a chemical reaction by simulating its atom level constituents. This bill directs the Department to utilize its state-of-the-art diagnostic equipment at its national laboratories and universities to analyze catalytic reactions in real time, and at the atomic level. These diagnostics will be used to validate computational models being developed in the advanced scientific computing program. This bill directs the Department to use the emerging field of nanoscience to tailor new catalytic compounds atom by atom, so as to accelerate reactions to produce clean fuels at rates that far exceed what we know today. In that regard, I expect the Department to utilize its nanoscience facilities to help design these new compounds. If we are successful in meeting this grand challenge, we will bring fuels to market quicker to meet increasing energy demands, while using less overall energy to produce them.

Finally, the bill directs the Secretary fund these efforts in multidisciplinary teams including computer scientists, chemists, biochemists, materials scientists and physicists. It requires the Department to transfer its catalysis research to industry so that they can bring to market the full fruits of our Government's advanced energy research in the shortest time possible.

We are currently debating an energy bill in the Energy and Natural Resources Committee. We plan to shortly mark up the research and development section, and, I think it is vitally important that this section address the topic of catalysis to produce future fuels for our Nation.

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

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

S. 873

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 ''Department of Energy Catalysis Research and Development Act''.

SEC. 2. FINDINGS.

The Congress finds that catalysis science is critical to the production of fuels for energy generation, the reduction of toxic waste streams, and the development of compounds to reduce global warming.

SEC. 3. DEPARTMENT OF ENERGY PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, through the Director of the Office of Science of the Department of Energy, shall establish a program of research and development in catalysis science consistent with the Secretary's statutory authorities related to research and development.

(b) SCOPE OF THE PROGRAM.—The program shall include efforts to—

(1) enable catalyst design using—

(i) combined experimental and mechanistic methodologies, and

(ii) computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for—

(i) high throughout synthesis of catalysts and novel assays for rapid throughout catalyst testing of small quantities of catalysts on diverse processes,

(ii) reducing the analytical cycle time by parallel operation and automation,

(iii) characterizing catalysts at the 0.1 to 2 nanometer scale, and

(iv) characterizing catalysts in-situ under actual operating conditions at high temperature and pressure,

(3) synthesize catalysts with specific site architecture,

(4) conduct research in the use of precious metals for catalysis (excluding platinum, palladium, and rhodium),

(5) translate molecular (picoscale) and nanoscale fundamentals to the design of catalytic compounds.

(c) DUTIES OF THE DIRECTOR OF THE OFFICE OF SCIENCE.—In carrying out the program under this Act, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators that include teams drawing upon the expertise of homogeneous, heterogeneous, and biocatalytic investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators conducting research and development in catalysis science in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other federal agencies.

(d) MERIT REVIEW REQUIRED.— All grants, contracts, cooperative agreements, or other financial assistance awards under this Act shall be made only after independent merit review.

(e) TRIENNAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on gains made in the fundamental science of catalysis and its progress made towards developing new fuels for energy production, material fabrication processes and methods to reduce global warming.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

The following sums are authorized to be appropriated to the Secretary of Energy, to remain available until expended, for the purposes of carrying out this Act:

(1) $33,000,000 for fiscal year 2004.
(2) $35,000,000 for fiscal year 2005.
(3) $36,500,000 for fiscal year 2006.
(4) $38,200,000 for fiscal year 2007.
(5) $40,100,000 for fiscal year 2008.
(6) $42,100,000 for fiscal year 2009.

By Mr. TALENT (for himself, Mr. SCHUMER, and Mr. GRAHAM of South Carolina):

S. 874. A bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes; to the Committee on Finance.

Mr. TALENT. Mr. President, today I rise on behalf of myself and my colleagues, Senators CHARLES SCHUMER and LINDSEY GRAHAM, in support of the Sickle Cell Treatment Act of 2003, which will help hundreds of thousands of people who suffer from Sickle Cell Disease. SCD, a genetic disease that affects red blood cells. This bill has bipartisan and bicameral support, as Representatives DANNY K. DAVIS, a Democrat, and RICHARD BURR, a Republican, will introduce the companion bill today.

Sickle Cell Disease is an inherited blood disorder that is a major health problem in the United States, primarily affecting African Americans. People with sickle cell disease have red blood cells that contain an abnormal type of hemoglobin. Sometimes these red blood cells become sickle-shaped—crescent shaped—and have difficulty passing through small blood vessels. When sickle-shaped cells block small blood vessels, less blood can reach that part of the body. Tissue that does not receive a normal blood flow eventually becomes damaged. This is what essentially causes the potentially life-threatening complications of sickle cell disease. There is currently no cure.

More than 2,500,000 Americans, mostly African Americans, have the sickle cell trait. Among newborn American infants, SCD occurs in approximately 1, in 300 African Americans. The most feared complication for children with SCD is a stroke, which may affect infants as young as 18 months of age. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood.

Many adults with SCD have severe physical problems, such as acute lung complications that can result in death. Adults with SCD can also develop chronic problems, including pulmonary disease, pulmonary hypertension, and kidney failure. The average life span for an adult with SCD is the mid-40s. Stroke in the adult SCD population commonly results in both mental and physical disabilities for life.

The Sickle Cell Treatment Act of 2003 helps combat SCD by providing Federal matching funds for SCD-related services under Medicaid, and by allowing States to receive a Federal 50–50 match for nonmedical expenses related to SCD treatment such as genetic counseling. This bill also authorizes a grant program in the amount of $10 million per year for 5 years to fund 40 health centers nationwide. Although I will go into detail about the bill, its focus is to encourage States to partner with SCD providers, who have historically been on the frontlines of this issue, to treat and find a cure for SCD patients.

With regard to the Federal matching funds, this bill allows states to reimburse SCD services beyond current Medicaid law, which only covers physician and laboratory services. For example, if a State wanted to increase reimbursement rates for SCD blood transfusions, it could do so through rate setting for the new SCD benefit without having to increase reimbursement for all Medicaid blood transfusions, therefore, making it easier for a State to reimburse at a higher rate for SCD-related treatment.

The bill also provides Federal reimbursement for education and other services related to the prevention and treatment of SCD. This will allow States to get a Federal 50-50 match for nonmedical, administrative expenses to include outreach and genetic counseling about SCD and its treatment for SCD patients of any age. This is critical to helping this historically underserved population, many of who may not know about SCD or its symptoms until it is too late.

This bill also allows hospitals and clinics to do outreach with non-medical personnel to educate high-risk communities about recognizing SCD. It would also allow nonmedical personnel like counselors to spend time with SCD families to discuss how to manage the disease. Providing this one-stop shop will centralize SCD-related treatment and counseling services to better serve those with SCD.

In addition to the diagnosis and treatment components, this bill creates a grant program for 40 health centers nationally. Specifically, the U.S. Department of Health and Human Services is authorized to distribute grants to up to 40 eligible health centers nationwide for $5 million for the next 5 fiscal years. Grants may be used for purposes including the education, treatment—i.e., genetic counseling and testing—and continuity of care for individuals with SCD, for training health professionals, and to identify and secure additional Federal funds to continue SCD treatment.

This bill also creates a National Coordinating Center to collect, monitor and distribute information on new and innovative practices to prevent and treat SCD, establish a model protocol for the grant recipients to follow as a quality control mechanism, develop educational materials regarding the prevention and treatment of SCD, and submit a report to Congress to ensure fiscal accountability and provide information of recent developments towards a cure for SCD.

The Sickle Cell Treatment Act of 2003 provides tremendous benefits to States. The approach taken in this bill is to add services related to SCD to the list of services covered by Medicaid for those people who are eligible for Medicaid under current eligibility rules.

For example, the bill allows States to use Medicaid funds to work with providers to better serve areas with a high prevalence of SCD in fields such as education and counseling,which are currently not reimbursed by Medicaid. This bill also allows the States to create opportunities to partner with providers to determine ''best practices'' to encourage the most effective and efficient use of medical resources toward SCD treatment and education.

In introducing the Sickle Cell Treatment Act of 2003, we are trying to help thousands of Americans who live with this disease. This legislation will provide many of these patients with access to the essential treatments that they need. It has the support of many important groups representing the SCD, African-American and children's health care communities as well as the providers and researchers who are working to treat and find a cure for this disease. For example, Allan Platt, Program Coordinator, The Georgia Comprehensive Sickle Cell Center at Grady Health System in Atlanta, GA has written me the following letter, which states in part, ''You did a wonderful thing for sickle cell patients and for those who are caring for them. Let us know how we can rally support for this.''

I want to offer my appreciation to the Sickle Cell Disease Association of American Inc., SCDAA, for its vigilant efforts to help find a cure for SCD, and working with my office to help craft this critical piece of legislation. SCDAA President and Chief Operating Officer, Lynda K. Anderson, has provided tireless support on behalf of this effort. Also I would like to acknowledge the efforts of SCDAA Board Member Michael R. DeBaun, M.D., M.P.H, Assistant Professor of Pediatrics and Biostatistics at the Washington University School of Medicine in St. Louis, MO. Lynda and Michael have brought the issues addressed in this bill to my attention and helped to bring the introduction of this bill to fruition.

The SCDAA was founded in 1971 to provide an effective coordinated community-based approach to developing and implementing strategies to resolve issues surrounding sickle cell disease. Through three decades, SCDAA and its member organizations have demonstrated how community-based organizations and comprehensive health and research centers can work with local, State and Federal agencies in furtherance of national health care objectives. To this day, SCDAA continues to pursue legislative initiatives to secure additional government funding for research and community-based services. Moreover, it has demonstrated its capacity to provide continued leadership in this area as a potential national coordinator center, and I look forward to the organization applying for such a designation, once this measure has been enacted into law. My colleagues and I on both sides of the aisle and in both legislative bodies look forward to working with SCDAA to fight this good fight and to secure the resources required to address the very unique needs of patients, families and communities affected by SCD.

I ask that my colleagues in the Senate join Senators SCHUMER and GRAHAM, and Representatives DAVIS and BURR in helping us to find a cure to help the approximately 70,000 Americans who have SCD and the approximately 1,800 American babies who are born with this disease each year in supporting the Sickle Cell Treatment Act of 2003.

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

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

S. 874

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 ''Sickle Cell Treatment Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Sickle Cell Disease (in this section referred to as ''SCD'') is an inherited disease of red blood cells that is a major health problem in the United States.

(2) Approximately 70,000 Americans have SCD and approximately 1,800 American babies are born with the disease each year. SCD also is a global problem with close to 300,000 babies born annually with the disease.

(3) In the United States, SCD is most common in African-Americans and in those of Hispanic, Mediterranean, and Middle Eastern ancestry. Among newborn American infants, SCD occurs in approximately 1 in 300 African-Americans, 1 in 36,000 Hispanics, and 1 in 80,000 Caucasians.

(4) More than 2,500,000 Americans, mostly African-Americans, have the sickle cell trait. These Americans are healthy carriers of the sickle cell gene who have inherited the normal hemoglobin gene from 1 parent and the sickle gene from the other parent. A sickle cell trait is not a disease, but when both parents have the sickle cell trait, there is a 1 in 4 chance with each pregnancy that the child will be born with SCD.

(5) Children with SCD may exhibit frequent pain episodes, entrapment of blood within the spleen, severe anemia, acute lung complications, and priapism. During episodes of severe pain, spleen enlargement, or acute lung complications, life threatening complications can develop rapidly. Children with SCD are also at risk for septicemia, meningitis, and stroke. Children with SCD at highest risk for stroke can be identified and, thus, treated early with regular blood transfusions for stroke prevention.

(6) The most feared complication for children with SCD is a stroke (either overt or silent) occurring in 30 percent of the children with sickle cell anemia prior to their 18th birthday and occurring in infants as young as 18 months of age. Students with SCD and silent strokes may not have any physical signs of such disease or strokes but may have a lower educational attainment when compared to children with SCD and no strokes. Approximately 60 percent of students with silent strokes have difficulty in school, require special education, or both.

(7) Many adults with SCD have acute problems, such as frequent pain episodes and acute lung complications that can result in death. Adults with SCD can also develop chronic problems, including pulmonary disease, pulmonary hypertension, degenerative changes in the shoulder and hip joints, poor vision, and kidney failure.

(8) The average life span for an adult with SCD is the mid-40s. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood. Causes of death include bacterial infection, stroke, and lung, kidney, heart, or liver failure. Bacterial infections and lung injuries are leading causes of death in children and adults with SCD.

(9) As a complex disorder with multisystem manifestations, SCD requires specialized comprehensive and continuous care to achieve the best possible outcome. Newborn screening, genetic counseling, and education of patients and family members are critical preventative measures that decrease morbidity and mortality, delaying or preventing complications, in-patient hospital stays, and increased overall costs of care.

(10) Stroke in the adult SCD population commonly results in both mental and physical disabilities for life.

(11) Currently, one of the most effective treatments to prevent or treat an overt stroke or a silent stroke for a child with SCD is at least monthly blood transfusions throughout childhood for many, and throughout life for some, requiring removal of sickle blood and replacement with normal blood.

(12) With acute lung complications, transfusions are usually required and are often the only therapy demonstrated to prevent premature death.

SEC. 3. INCLUSION OF PRIMARY AND SECONDARY PREVENTATIVE MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (a)—

(A) by striking ''and'' at the end of paragraph (26);

(B) by redesignating paragraph (27) as paragraph (28); and

(C) by inserting after paragraph (26), the following:

''(27) subject to subsection (x), primary and secondary preventative medical strategies, including prophylaxes, and treatment and services for individuals who have Sickle Cell Disease; and''; and

(2) by adding at the end the following:

''(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

''(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

''(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait.

''(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.''.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking ''plus'' at the end and inserting ''and''; and

(2) by adding at the end the following:

''(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

''(i) services to identify and educate individuals who have Sickle Cell Disease or who

are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

''(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who have Sickle Cell Disease; plus''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

SEC. 4. DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(A) the coordination of service delivery for individuals with Sickle Cell Disease;

(B) genetic counseling and testing;

(C) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(D) training of health professionals; and

(E) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(2) GRANT AWARD REQUIREMENTS.—

(A) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(B) PRIORITY.—In awarding grants under this section, the Administrator shall give priority to awarding grants to eligible entities that are—

(i) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(ii) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(b) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this section shall use funds made available under the grant to carry out, in addition to the activities described in subsection (a)(1), the following activities:

(1) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(A) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(B) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(C) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(2) To train nursing and other health staff who specialize in pediatrics, obstetrics, internal medicine, or family practice to provide health care and genetic counseling for individuals with the sickle cell trait.

(3) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(4) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease, including the genetic testing of parents or other appropriate relatives of children with Sickle Cell Disease and of adults with Sickle Cell Disease.

(c) NATIONAL COORDINATING CENTER.—

(1) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this section.

(2) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(A) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(B) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(C) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(D) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this section and such direct outcome measures as—

(i) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(ii) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(d) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(e) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Health Resources and Services Administration.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(A) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(B) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in subparagraph (A), or the experts described in subsection (b)(3), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(3) FEDERALLY-QUALIFIED HEALTH CENTER.—The term ''Federally-qualified health center'' has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for each of fiscal years 2004 through 2009.

By Mr. KERRY (for himself, Mr. SANTORUM, Mr. SARBANES, Mr. ALLARD, Mr. DASCHLE, Mr. KENNEDY, Ms. STABENOW, and Mrs. CLINTON):

S. 875. A bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes; to the Committee on Finance.

● Mr. KERRY. Mr. President, owning your own home is the foundation of the American dream. It encourages personal responsibility, improves child development, provides economic security and gives families a greater stake in the development of their communities. Communities where homeownership rates are highest have lower crime rates, better schools and provide a better quality of life for families to raise their children.

However, too many low- and moderate-income families living in urban and rural areas across our nation have not been able to share in the dream and benefits of homeownership due to the lack of available housing or the high cost of what housing is available.

Today, I am introducing the Community Development Homeownership Tax Credit Act, along with Senators SANTORUM, SARBANES, ALLARD, DASCHLE, KENNEDY, STABENOW and CLINTON to encourage the construction and substantial rehabilitation of 500,000 homes over the next ten years for low- and moderate-income families in economically distressed areas.

The bill will increase the supply of affordable homes for sale in inner-cities, rural areas and low- and moderate-income neighborhoods across the United States. It will bridge the gap that exists today between the cost of developing-affordable housing and the price at which these homes can be sold in many low-income neighborhoods by providing investors with a tax credit of up to 50 percent of the cost of home construction or rehabilitation.

By facing the mounting challenge of producing affordable housing, I strongly believe we can help provide critically needed economic development low- and moderate-income communities across our country and provide an important stimulus in the development of our nation's economy. The production of new homes provided in this legislation will create both construction and construction-related jobs which will both increase economic growth and lower the unemployment rate. New Economic activity can revitalize many inner-city neighborhoods and rural areas where unemployment and crime have been a fact of life for too long.

Buying a new home also leads to the purchase of new appliances and furnishings. Average new homebuyers spend almost $5,000 on appliances and

furnishings during the first year of living in their new home. This will help stimulate the manufacturing section of our economy. It is clear that building new homes creates jobs and moves our economy forward.

Over the past decade, we have made substantial progress in increasing the homeownership rate in the United States. In 2000, the U.S. homeownership rate reached a record high of 67.1 percent with some 71 million U.S. households owning their own home. However, many working families have been struggling to find an affordable home in our nation's cities. Over the past two generations, many families have moved out of cities and into the suburbs, which has depressed the development of housing in the inner-city. In 1999, the homeownership rate in the central-city areas was 50.4 percent, this is more than 20 percent lower than the suburban homeownership rate of 73.6 percent.

Working families with low- and moderate-income have also had difficulties buying a home. Currently, 83.3 percent of households with family income higher than the median family income are homeowners, while only 52.4 percent of households with family income below the median income are homeowners.

Too many communities face a lack of available homes because developers are concerned that the new houses may not be sold for the cost of construction. Many properties or sites that could be developed into affordable homes now sit vacant, and neighborhoods remain undeveloped because the gap between development costs and market prices has not been filled. The lack of affordable single-family homes affect many urban and rural areas where a majority of residents earn less than the median income.

Today, too many minority families face barriers in their attempts to reach the American Dream of homeownership. According to Census data for the fourth quarter of 2002, non-Hispanic whites have a 74.8 percent homeownership rate, while minority groups have just a 55.4 percent homeownership rate. African Americans have only a 47.5 percent homeownership rate, and Hispanics have a 49.5 percent homeownership rate in the same study. The gap between white and African American homeownership rates has been approximately 25 percent to 30 percent for most of the last century. These numbers are simply unacceptable.

Despite our efforts at the federal level to promote homeownership, many minorities also face higher than average denial rates for mortgage applications. A recent study by the University of Massachusetts shows that racial and ethnic lending disparities continue in Boston. For example, African Americans were 2.73 times as likely as whites to be denied in their mortgage applications. Latinos were 2.25 times as likely as whites to be denied in their mortgage applications. Finally, Asians were 1.55 times as likely as whites to be denied in their mortgage applications.

Along with a lack of available homes in urban and rural areas, our nation is also facing an affordable rental housing crisis. Thousands of low-income families with children, the disabled, and the elderly are finding it difficult to obtain or afford privately owned affordable rental housing units. Recent changes in the housing market have limited the availability of affordable housing across the country, while the growth in our economy in the last decade has dramatically increased the cost of the housing that remains. Constructing new housing will help many families move out of rental housing and help increase the number of available rental housing units and help ease the affordable housing crisis we now face.

The story of Benjamin and Rita Okafor shows how working families in Massachusetts have great difficulty obtaining a decent home of their own. For many years, the Okafor's and their two young children were forced to live in a one-bedroom apartment. Benjamin Okafor, who worked full time as a cab driver in Boston, spent days and months looking for a bigger apartment for his family. However, the lack of affordable housing in the Boston area made it impossible for him to find anything appropriate. When his wife Rita became pregnant with their third child, the Okafor's knew something had to change in their living situation. Luckily, Ben was accepted into the Habitat for Humanity program and worked 300 sweat equity hours constructing a house. In August 2000, the Okafor family moved into a new home of their own in Dorchester. Ben says that this new home gives them the hope and stability they need. Yet, there are still far too many working families living a substandard housing and many more families that desperately need assistance to become homeowners. A new tax incentive for developers to build affordable homes in distressed areas will help working families like the Okafor's to afford a home for the first time.

The benefits of owning a home can bring families financial rewards and personal satisfaction with a deep sense of security. Real estate values have historically risen over time. Homeowners may deduct mortgage interest and property taxes as an expense against income. Real estate has generally been seen as marketable, allowing for property to be sold at a predictable price to a dependable group of available buyers.

We know that owning a home instead of renting leads to a better quality of life for its residents, but we are now learning more and more about the impact homeownership has on the cognitive and behavioral outcomes for children. A recent study by Ohio State University shows that children of families who own their home have fewer behavioral problems and are able to learn more effectively. Specifically, a child's cognitive abilities are 9 percent higher in math and 7 percent higher in reading for children living in their own homes. The study also shows that these children also experienced up to 3 percent lower behavioral problems than other children. This study proves that the national goal of homeownership has an added benefit of helping America's children learn and behave better, which helps our schools produce better citizens and will help our economy develop in the long term.

The Community Development Tax Credit Act, which I am introducing today, bridges the gap between development costs and market value to enable the development of new or refurbished homes in urban and rural areas to blossom. The tax credit would be available to developers or investors that build or substantially rehabilitate homes for sale to low- or moderate-income buyers in low-income areas. The credit would generate equity investment sufficient to cover the gap between the cost of development and the price at which the home can be sold to an eligible buyer.

The tax credit volume would be limited to $1.75 per capita for each State and allocated by the States themselves. Credits would be claimed over 5 years, starting when homes are sold. I believe this legislation will result in approximately 50,000 homes built or refurbished annually, assuming about $40,000 per home.

The maximum tax credit equals 50 percent of the cost of construction, substantial rehabilitation, and building acquisition. The eligible cost may not exceed the Federal Housing Administration single-family mortgage limits. The minimum rehabilitation costs is $25,000. Eligible building acquisition costs are limited to one-half of rehabilitation costs. States will allocate only the level of tax credits necessary for financial feasibility of individual projects. Ten percent of the available credit will be set aside for nonprofit organizations.

The eligible areas for the tax credit are defined as Census Tracts with median income below 80 percent of the area or state median. Rural areas that are currently eligible for USDA housing programs will be eligible for the tax credit. Indian tribal lands will be eligible for the tax credit. State-identified areas of chronic economic distress will also be eligible for tax credit, subject to disapproval by the Department of Housing and Urban Development.

Those eligible to buy homes built or refurbished using the tax credit include: individuals with incomes up to 80 percent of the area or state median and up to 100 percent of area median income in low-income/high-poverty Census Tracts.

Individual states will write plans to allocate the available tax credits using the following selection criteria: contribution of the development to community stability and revitalization; community and local government support; need for homeownership development in the area; sponsor capability; and the long-term sustainability of the

project as owner-occupied residences. Then individual developers along with investors can apply to the state to be awarded a tax credit for developing a property in a low- or moderate-income area. If chosen by the state, investors can start to claim the tax credit as the homes are sold to eligible buyers. They can continue to claim the tax credit for five years. Investors are not subject to recapture. If the home owner sells the residence within five years, a scale would determine the percentage of the gain that would be recaptured by the Federal Government. In the first two years, 100 percent of the gain and 80, 70 and 60 percent in the third, fourth, and fifth years, respectively, would be recaptured.

The Community Development Homeownership Tax Credit Act that I am introducing today will positively affect the lives for approximately 500,000 families over the next 10 years, help resolve the affordable rental housing crisis we face, and help create jobs and grow our economy. I ask all of my colleagues to help expand the foundation of the American Dream by supporting this new tax incentive to encourage the construction and rehabilitation of homes for low- and moderate-income families in economically distressed areas.

This legislation is supported by the U.S. Conference of Mayors, Fannie Mae, Freddie Mac, the Enterprise Foundation, Local Initiatives Support Coalition, Mortgage Bankers Association of America, National Association of Home Builders, National Low Income Housing Coalition, National Association of Local Housing Finance Agencies, National Association of Realtors, National Council of La Raza, National Hispanic Housing Conference, Habitat for Humanity International and others.●

By Mr. WYDEN (for himself, Ms. COLLINS, and Mrs. CLINTON):

S. 876. A bill to require public disclosure of noncompetitive contracting for the reconstruction of the infrastructure of Iraq, and for other purposes; to the Committee on Governmental Affairs.

Mr. WYDEN. Mr. President, Senators COLLINS, CLINTON, BYRD, LIEBERMAN and I want the rebuilding of Iraq to be done in the best way possible—for the Iraqi people and for the American taxpayers who will foot the bill. To ensure that happens, we're introducing bipartisan legislation today to ensure accountability in the awarding of U.S. contracts to rebuild Iraq.

Usually in situations like this, open and competitive bidding is used to get the best deal for the taxpayers. The same needs to hold true here. Contracts to rebuild Iraq should be awarded in the sunshine—not behind a smokescreen. If the Federal Government chooses not to use free market competition to get the most reasonable price from the most qualified contractor, then, at a minimum, they should have to tell the American people why.

The bill we're introducing today is called the Sunshine in Iraq Reconstruction Contracting Act. It's intended to shine light into the secretive practices the United States Agency for International Development, USAID, and other Federal agencies are using to hand out in Iraqi work.

There are dollars-and-cents reasons for doing this. The potential cost of rebuilding Iraq has been estimated at around $100 billion. That's a lot of taxpayer money. And the U.S. General Accounting Office, GAO, reports that sole-source and limited-source contracts aren't usually the best buy. Investigator found that Army officials often just took whatever level of services the contractor gave, without ever asking if it could be done more efficiently or at a lower cost.

Despite that, sole-source and limited-source contracts look like the rule, not the exception, for rebuilding Iraq. And these are costing some big cash. Contracts awarded for oil fire fighting and other projects are so-called ''cost-plus'' contracts. They pay a company's expenses, plus a guaranteed profit of one to eight percent. There are no limits on total costs, so the more a firm charges in expenses, the more profit it makes. If the Federal Government's going to spend my constituents' money that way, without asking for competitive bids, I think my constituents deserve to know why.

Let me give you two concrete examples of the kind of secrecy I'm talking about. A lot of the known details come from press reports. In February and March, USAID invited a handful of companies to bid on $1.7 billion in Iraqi projects—rebuilding highways, bridges, schools. Competition for one $600 million contract was limited to seven large U.S. engineering firms. USAID apparently put out some bid invitations before the war even started.

On March 24, the Army Corps of Engineers announced a sole-source, unlimited contract to two American companies to control Iraqi oil fires. The no-bid contract is still classified. Information that should be available to the public was finalized on March 8 but is still under wraps. What we know is that other firms that had experience putting out oil well fires in Kuwait in 1991 were left out of the process altogether. And we also know that as early as last fall, the parent company of these contractors got an exclusive contract to study how to supply oil services during an invasion of Iraq.

Anybody looking to find an explanation for this closed-door contracting is likely to come up short. So far the agencies haven't said much. Last month, USAID announced that it would limit competition to companies with demonstrated technical ability, proven accounting mechanisms, ability to field a qualified technical team on short notice, and authority to handle classified national security material. The USAID Director told The New York Times that to work in Iraq you have to have a security clearance, and only these few American companies have that clearance.

I sit on the Intelligence Committee, and don't know of any good reason why a contractor bidding to rebuild a school, hospital, sewer system or any other part of Iraq's infrastructure would need a security clearance. In any case, four of USAID's eight reconstruction projects will allow subcontracting to companies that don't have to meet the security requirements. So that argument doesn't hold up.

Our bill has a simple premise to ensure accountability in the awarding process. It says that any Federal entity bypassing competitive bidding for Iraqi reconstruction projects has to disclose some key information. Most importantly, that means revealing the documents used to justify a sole-source or limited contract. Agencies are already required by law to prepare this rationale for sole source bidding. Our bill just makes the information accessible. We've written provisions to protect classified information, while still giving Congress full oversight over the billions in taxpayer money that Americans are being asked to commit in Iraq.

There are too many questions and the stakes are too high for Congress not to demand public disclosure of this information. I am pleased that Senators COLLINS, CLINTON, BYRD and LIEBERMAN are joining me in introducing this legislation to bring greater accountability and openness to the contracting for Iraq reconstruction.

I ask unanimous consent that a copy of our bill be printed in the RECORD.

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

S. 876

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 ''Sunshine in Iraq Reconstruction Contracting Act of 2003''.

SEC. 2. PUBLIC DISCLOSURE OF NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE IN IRAQ.

(a) DISCLOSURE REQUIRED.—

(1) PUBLICATION AND PUBLIC AVAILABILITY.—The head of an executive agency of the United States that enters into a contract for the repair, maintenance, rehabilitation, or construction of infrastructure in Iraq without full and open competition shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(A) The amount of the contract.

(B) A brief description of the scope of the contract.

(C) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(D) The justification and approval documents on which was based the determination

to use procedures other than procedures that provide for full and open competition.

(2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL YEAR 2013.—Paragraph (1) does not apply to a contract entered into after September 30, 2013.

(b) CLASSIFIED INFORMATION.—

(1) AUTHORITY TO WITHHOLD.—The head of an executive agency may—

(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

(B) redact any part so classified that is in a document not so classified before publication and disclosure of the document under subsection (a).

(2) AVAILABILITY TO CONGRESS.—In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(B) The Committees on Appropriations of the Senate and the House of Representatives.

(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(c) FISCAL YEAR 2003 CONTRACTS.—This section shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, subsection (a) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

(d) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—Nothing in this section shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

(e) DEFINITIONS.—In this section, the terms ''executive agency'' and ''full and open competition'' have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

By Mr. BURNS (for himself, Mr. WYDEN, Mr. STEVENS, Mr. BREAUX, Mr. THOMAS, Ms. LANDRIEU, and Mr. SCHUMER):

S. 877. A bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Thank you, Mr. President. I rise today to introduce the CAN-SPAM bill along with my good friend and colleague Senator WYDEN. The CAN-SPAM bill addresses an issue of critical importance to the further development of commerce on the Internet: how to control the explosion of unsolicited commercial e-mail. I also want to thank the additional original cosponsors of the bill, Senator STEVENS, Senator BREAUX, Senator THOMAS, Senator LANDRIEU and Senator SCHUMER.

While it is obvious to anyone with an e-mail account that the scourge of ''spam'' has continued to worsen, the numbers and the trends they represent paint an even more disturbing picture. According to an article in the Washington Post less than a month ago, spam currently accounts for 40 percent of all e-mail traffic. Spam has become more than just an inconvenience that we have learned to live with; it has now become a fundamental part of any e-mail inbox with serious economic consequences. According to one study done by a consulting group, spam will cost U.S. businesses more than $10 billion this year alone.

Spam also makes working on the Internet less efficient, by clogging up servers on one end and inboxes on the other. I want some accountability brought to bear on this issue, and feel that by introducing this legislation today, we have taken an appropriate and meaningful step to tame a horse we can't seem to break just yet. This problem continues to escalate, and experts warn that more than half of e-mail traffic will be spam by this summer. This point bears repeating: within months, you will waste more than half of your time with unsolicited e-mail.

The CAN-SPAM bill would require e-mail marketers to comply with a straightforward set of workable, common-sense rules designed to give consumers more control over spam. Specifically, the bill would require a sender of marketing e-mail to include a clear and conspicuous ''opt-out'' mechanism so that they could ''unsubscribe'' from further unwanted e-mail. Also, the bill would prohibit e-mail marketers from using deceptive headers or subject lines, so that consumers will be able to tell who initiated the solicitation.

The bill includes strong enforcement provisions to ensure compliance. The Federal Trade Commission would have authority to impose steep civil fines of up to $500,000 on spammers. This fine could be tripled if the violation is found to be intentional. In short, this bill provides broad consumer protection against bad actors, while still allowing Internet advertising a justified means of flourishing.

Spamming is a serious economic problem and I believe it is absolutely critical that we address this now, so that the Internet is allowed to reach its full potential. Because of the vast distances in Montana, many of my constituents are forced to pay long-distance charges for their time on the Internet. Spam makes it nearly impossible for these people to enjoy the experience, and it makes it even harder for them to see how this will help rural America flourish in the 21st century. Also, Internet service providers are bombarded with spam that often corrupts or shuts down their systems. In today's information age where beating the competitor to the next sale is absolutely critical to survival, these shutdowns can cause real economic damage. We may be in a downturn in the American economy and especially in the high technology sector, but the efficiencies created through vast information sharing are here to stay and will help propel our economy to levels beyond our imagination, but in order to reach this potential we must eliminate the bad actors who threaten these efficiencies.

The fact that this bill is strongly supported by pillars of the Internet age such as Yahoo, America Online and eBay is a testament to its common-sense approach. I think these companies for their critical expertise in perfecting this bill which would help to address this scourge of the digital age. I also appreciate the numerous valuable suggestions from the many concerned cyber-citizens who want to see this Pandora's box of digital dreck closed once and for all.

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

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

S. 877

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 ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN-SPAM Act of 2003''.

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) There is a right of free speech on the Internet.

(2) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

(3) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

(4) Unsolicited commercial electronic mail can be a mechanism through which businesses advertise and attract customers in the online environment.

(5) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(6) Unsolicited commercial electronic mail may impose significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(8) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no

such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(9) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

(10) An increasing number of senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail;

(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that the recipient has expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to an electronic mail address.

(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

(9) IMPLIED CONSENT.—The term ''implied consent'', when used with respect to a commercial electronic mail message, means that—

(A) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

(B) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A) and at the time the notice under subparagraph (B) was provided to the recipient, as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender for purposes of this paragraph.

(10) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate such message or to procure the origination of such message, but shall not include actions that constitute routine conveyance of such message.

(11) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(12) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(13) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2) of title 18, United States Code.

(14) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has provided and selected the recipient addresses.

(16) SENDER.—The term ''sender'', when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is to facilitate, complete, confirm, provide, or request information concerning—

(A) a commercial transaction that the recipient has previously agreed to enter into with the sender;

(B) an existing commercial relationship, formed with or without an exchange of consideration, involving the ongoing purchase or use by the recipient of products or services offered by the sender; or

(C) an existing employment relationship or related benefit plan.

(18) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term ''unsolicited commercial electronic mail message'' means any commercial electronic mail message that—

(A) is not a transactional or relationship message; and

(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

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

''§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information

''(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

''(b) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Unsolicited commercial electronic mail containing fraudulent routing information''.

SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that contains, or is accompanied by, header information that is materially or intentionally false or materially or intentionally misleading. For purposes of this paragraph, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message with a subject heading that such person

knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of Internet-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The sender of an unsolicited commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request to a sender, using a mechanism provided pursuant to paragraph (3), not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request; or

(C) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of an unsolicited commercial electronic mail message that the person knows, or consciously avoids knowing, would violate subparagraph (A) or (B).

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides—

(A) clear and conspicuous identification that the message is an advertisement or solicitation;

(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

(C) a valid physical postal address of the sender.

(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CERTAIN HARVESTED ELECTRONIC MAIL ADDRESSES.—

(1) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such a message through the provision or selection of addresses to which the message will be sent, if such person knows that, or acts with reckless disregard as to whether—

(A) the electronic mail address of the recipient was obtained, using an automated means, from an Internet website or proprietary online service operated by another person; or

(B) the website or proprietary online service from which the address was obtained included, at the time the address was obtained, a notice stating that the operator of such a website or proprietary online service will not give, sell, or otherwise transfer addresses maintained by such site or service to any other party for the purpose of initiating, or enabling others to initiate, unsolicited electronic mail messages.

(2) DISCLAIMER.—Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that —

(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties

and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message received by such residents treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(6) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—

(A) enjoin further violation by the defendant; or

(B) recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message carried over the facilities of the provider of Internet access service or sent to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b) treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

(3) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

SEC. 7. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—

(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any State or local government statute, regulation, or rule regulating the use of electronic mail to send commercial messages.

(2) EXCEPTIONS.—Except as provided in paragraph (3), this Act does not supersede or pre-empt—

(A) State trespass, contract, or tort law or any civil action thereunder; or

(B) any provision of Federal, State, or local criminal law or any civil remedy available under such law that relates to acts of fraud or theft perpetrated by means of the unauthorized transmission of commercial electronic mail messages.

(3) LIMITATION ON EXCEPTIONS.—Paragraph (2) does not apply to a State or local government statute, regulation, or rule that directly regulates unsolicited commercial electronic mail and that treats the mere sending of unsolicited commercial electronic mail in a manner that complies with this Act as sufficient to constitute a violation of such statute, regulation, or rule or to create a cause of action thereunder.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act.

SEC. 9 SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 10. EFFECTIVE DATE.

The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.

Mr. WYDEN. Mr. President, I am pleased today to be teaming up again with my good friend Senator BURNS to reintroduce legislation to address the rising tide of unsolicited commercial e-mail, commonly known as ''spam.''

In the last Congress, our anti-spam legislation was approved unanimously by the Senate Commerce Committee. Since that time—nearly a year ago now—the problem of spam has been increasing at an alarming rate. Roughly

40 percent of all e-mail traffic in the United States is spam, up from 8 percent in late 2001 and nearly doubling in the past six months. By 2004, according to some estimates, a typical company that fails to take defensive action could find that over 50 percent of its e-mail messages will be spam. This isn't just annoying, it's costly: one consulting group has estimated that spam will cost U.S. organizations more than $10 billion this year, due to expenses for anti-spam equipment and manpower and lost productivity.

If nothing is done, the situation is only likely to get worse. The fundamental problem—and what makes spam different from other types of marketing—is that it is so cheap to send huge volumes of messages. With the stroke of a key, the spammer can let fly a massive torrent of e-mails. And since the sender doesn't pay any per-message postage, the incentive is to send as many as possible. The cost of all these extra messages is borne by the Internet service providers, ISPs, and the recipients, not by the sender. So as far as the spammer is concerned, the sky is the limit.

Anyone who uses e-mail should be deeply concerned about this trend. In a few short years, e-mail quickly went from a novelty to a core medium of communication for millions of Americans. They came to rely on it daily, for business and personal communications alike. But just as quickly as e-mail rose to prominence, its usefulness could dwindle—buried under an avalanche of endless ''Get Rich Quick,'' ''Lose Weight Fast,'' and offensive pornographic marketing pitches. As consumers grow frustrated with bloated in-boxes, and as ISP networks and e-commerce websites are slowed by mounting junk e-mail traffic jams, enthusiasm for the entire medium of e-mail and e-commerce could sour.

Right now, e-mail users and ISPs are trying to manage the problem as best they can. They use filtering software, or lists of known spammers, or sign up for special anti-spam services. But these tactics can be burdensome, costly, and only partially effective. The fact is, existing laws do not provide sufficient tools. More help is needed.

Many States have moved to address the issue. But e-mail is not a medium that respects, or even recognizes, State borders. Indeed, e-mail addresses tell nothing about which State the user is located in, so the sender and recipient of an e-mail message may have no clue where the other is located. Therefore, this is one area where a State-by-State patchwork of rules makes no sense. It is time for a nationwide approach.

That is why Senator BURNS and I are reintroducing the ''Controlling the Assault of Non-Solicited Pornography and Marketing Act''—the CAN SPAM Act, for short. This bipartisan legislation says that if you want to send unsolicited marketing e-mail, you've got to play by a set of rules—rules that allow the recipient to see where the messages are coming from, and to tell the sender to stop. The basic goal is simple: give the consumer more control.

Specifically, the bill would prohibit the use of falsified or deceptive headers or subject lines, so that consumers will be able to identify the true source of the message. A sender of unsolicited marketing e-mail would also be required to provide the recipient with a return address or similar mechanism that can be used to tell the sender, ''no more.'' And once a consumer says ''no more,'' a sender would be required to honor that request. Senders of unsolicited commercial messages would also be required to include a clear notification that the message is an advertisement or solicitation, and a valid physical postal address.

The bill includes strong enforcement provisions to ensure compliance. Spammers that intentionally disguise their identities would be subject to misdemeanor criminal penalties. The Federal Trade Commission would have authority to impose civil fines. State attorneys general would be able to bring suit on behalf of the citizens of their states. And ISPs would be able to bring suit to keep unlawful spam off their networks. In all cases, particularly high penalties would be available for true ''bad actors''—the shady, high-volume spammers who have no intention of behaving in a lawful and responsible manner.

Our goal here is not to discourage legitimate online communications between businesses and their customers. Senator BURNS and I have no intention of interfering with a company's ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth. Rather, we want to go after those unscrupulous individuals who use e-mail in an annoying and misleading fashion. I believe this bill strikes that important balance.

Senator BURNS and I have been at this for three years now, and have worked with many different groups in shaping the legislation. We believe we have made real progress in addressing some of the legitimate concerns that were raised about previous versions of the bill. Naturally, there are interested parties who have additional ideas for measures they would like to see. We will be happy to continue to work with them, and I would also point out that the bill calls for a study to evaluate this initial Federal step against spam and to determine whether further provisions are needed. But the bill we are introducing today offers a workable, common-sense approach that should be politically viable this year.

I am pleased that Senators BREAUX, LANDRIEU, SCHUMER, and THOMAS are joining Senator BURNS and me in cosponsoring this legislation. I urge the rest of my Senate colleagues to join with us on moving it forward as promptly as possible, so that the Senate won't still be debating the issue, with no action taken, several years from now.

By Mr. SMITH.

S. 879. A bill to amend the Internal Revenue Code of 1986 to increase and extend the special depreciation allowance, and for other purpose; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Economic Stimulus Act of 2003, legislation that will allow a 50 percent bonus depreciation over a 5 year period. Last year I was proud to introduce and pass a 30 percent bonus depreciation incentive as part of legislation signed into law in March 2002. We had great bipartisan support on this issue and I hope that similar action will take place during consideration of this year's tax bill.

I introduce the Economic Stimulus Act of 2003 in order to build on last year's effort by both increasing that bonus to 50 percent and extending it through 2008. Our economy clearly needs a boost, and this provision will complement many of the provisions in President Bush's economic growth package.

Recently, U.S. Department of Commerce data revealed that private investment in high tech equipment ended it's decline as this provision went into effect last year and has begun to increase modestly in the past year. A significant increase in that bonus along with an extension of its effective date can only boost business investment even further. By extending the effective date past next year, businesses will be able to better plan for sustained increases in technology investment.

This legislation will provide an immediate and broad stimulus to the U.S. economy by encouraging business investment. In my own state of Oregon I can look to both heavy industry and the hi tech sector and see the real return this legislation will have on our economy. Heavy industry in my state will have an ability to save family-wage jobs and put additional employees to work in Oregon. For example, the rail supply industry has been hard hit, and though there is a need for investment, there has been a reluctance to invest significant sums that are necessary to sustain this industry. Bonus depreciation provisions is an additional incentive that will lead institutional investors, leasing companies, shippers and railroads to invest in new rail equipment.

In Oregon's high-tech sector the strong increase in the first year depreciation amount will have a real and positive impact on the investment environment for high-tech equipment, such as computer hardware, software and broadband network infrastructure. This legislation will definitely stimulate the demand for the software and the whole high-tech sector. In Oregon, the hi-tech sector has been a major component of economic growth and I am intent that this engine of growth continue to provide stimulus to the economy.

I note that there are a myriad of bonus depreciation proposals out there. Most don't provide enough lead time however to make real and substantive business decisions. The current downturn is caused in part by a decline in business investment. So what kind of investment can be stimulated by a year-long depreciation incentive? It probably gives business people time to buy a chair and some new wastebaskets.

But a year is not enough time to start a major project that could employ thousands of people. It doesn't allow time to build heavy equipment, modernize a lumber mill, revamp a corporate computer system, repair a railbed, or construct an airplane. It doesn't allow enough time to obtain building permits, perform environmental reviews, or complete architectural or engineering studies.

We need to create a booming economy not just for today, but for the next several years. So I must emphasize that short depreciation proposals lack economic weight.

Bonus depreciation is probably the best idea of any stimulus proposal. I ask that all my colleagues consider and support the Economic Stimulus Act of 2003. 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. 879

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Stimulus Act of 2003''.

SEC. 2. EXPANSION OF SPECIAL DEPRECIATION ALLOWANCE.

(a) IN GENERAL.—Subsection (k) of section 168 (relating to accelerated cost recovery system) is amended—

(1) by adding at the end of paragraph (1) the following new flush sentence:

''In the case of any qualified property acquired by the taxpayer pursuant to a written binding contract which was entered into after the date of the enactment of the Economic Stimulus Act of 2003, subparagraph (A) shall be applied by substituting '50 percent' for '30 percent'.'',

(2) by redesignating subclauses (III) and (IV) of paragraph (2)(A)(i) as subclauses (IV) and (V), respectively,

(3) by inserting after subclause (II) of paragraph (2)(A)(i) the following new subclause:

''(III) which is a motion picture film or videotape (as defined in section 167(f)(1)(B) for which a deduction is allowable under section 167 without regard to this subsection,'',

(4) by striking clause (iv) of paragraph (2)(A) and inserting the following new clause:

''(iv) which is placed in service by the taxpayer—

''(I) except as provided in subclauses (II) and (III), before April 1, 2010,

''(II) in the case of transportation property described in subparagraph (B), before the later of the date which is 90 days after delivery of such property or which is 10 years after the date of the enactment of the Economic Stimulus Act of 2003, or

''(III) in the case of other property described in subparagraph (B), before January 1, 2011.'',

(5) by inserting ''transportation property which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A), or other'' before ''property'' in the matter preceding subclause (I) of paragraph (2)(B)(i),

(6) by striking ''production before September 11, 2004.'' in paragraph (2)(B)(ii) and inserting ''production—

''(I) with respect to transportation property, before the earlier of the date which is 90 days after delivery of such property or which is 10 years after the date of the enactment of the Economic Stimulus Act of 2003, and

''(II) with respect to other property, before January 1, 2010.'',

(7) by striking ''SEPTEMBER 11, 2004'' in the heading of clause (ii) of paragraph (2)(B) and inserting ''CERTAIN'',

(8) by striking ''subparagraph'' in paragraph (2)(B)(iii) and inserting ''paragraph'',

(9) by striking ''September 11, 2004'' each place it appears in the subsection and inserting ''January 1, 2010'', and

(10) by striking ''SEPTEMBER 11, 2004'' in the heading thereof and inserting ''JANUARY 1, 2010''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for clause (i) of section 1400L(b)(2)(C) of the Internal Revenue Code of 1986 is amended by striking ''30 PERCENT ADDITIONAL'' and inserting ''ADDITIONAL''.

(2) Section 1400L(b)(2)(D) of such Code is amended by inserting ''(as in effect on the day after the date of the enactment of this section)'' after ''section 168(k)(2)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property acquired after the date of the enactment of this Act, in taxable years ending after such date.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Mrs. LINCOLN, Mr. HATCH, Mr. JEFFORDS, Ms. LANDRIEU, and Mr. DAYTON):

S. 881. A bill to amend title XVIII of the Social Security Act to establish a minimum geographic cost-of-practice index value for physicians' services furnished under the Medicare program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators COCHRAN, LINCOLN, HATCH, JEFFORDS, LANDRIEU, and DAYTON entitled the ''Rural Equity Payment Index Reform Act of 2003'' is designed to reduce the work payment inequity between urban and rural localities under the Medicare physician fee schedule. This legislation is a companion bill to HR 33, introduced by Representative Doug Bereuter, which now has over 65 House cosponsors.

In my own State of New Mexico, recruitment and retention of physicians in rural areas is an ongoing problem, which is contributed to, in a part, by inequities in payments these physicians receive in comparison to their urban counterparts. With only 170 physicians per 100,000 people, New Mexico ranks well behind the national average with regard to primary care and specialist physicians.

Lack of adequate reimbursement, in the face of increasing costs, is a critical factor leading to the shortage of physician services in my state, and in other rural areas. The State of New Mexico ranks 32nd in the nation in terms of Medicare reimbursement, as defined by the geographic adjustment factor used to set reimbursement rates. Yet, an office visit to a rural physician is no different in time, effort, or workload compared to an office visit to an urban physician. Geographically adjusting the quantifiable workload simply makes no sense; physician work should be valued equally, irrespective of where a physician works.

This inequity unfairly ''punishes'' physicians in non-metropolitan areas, where there are often proportionately larger populations of Medicare beneficiaries. In effect, the rural areas subsidize healthcare in urban areas, while they struggle to attract health care professionals. Since Medicare beneficiaries pay into the program on the basis of income and wages, and beneficiaries pay the same premium for part B services, these inequitable physician fee payments result in substantial cross-subsidies from people living in low payment States to people living in higher payment States.

Targeted efforts to provide relief to rural doctors in low payment localities with more equitable payments would improve access to primary and tertiary services. The bill I am introducing would lessen the disparity that currently exists between rural and urban areas. It gradually phases in a floor that upwardly adjusts reimbursement rates for rural providers, without lowering the reimbursement for urban providers, so that the discrepancy will progressively be corrected.

This bill would phase-in a floor of 1.000 for the Medicare ''physician work adjuster'', thereby raising all localities with a work adjuster below 1.000 to that level. This proposed change would be put in place without regard to the budget neutrality agreement in the present law. The phase-in approach softens the budgetary implications by spreading it out over four years.

It is estimated that payment rates to New Mexico physicians will increase by 2.8 million dollars over a 4-year period. In my state, this represents an important increase in reimbursements for physicians, but it also represents a tangible acknowledgement of the hard work and efforts that our physicians commit to patient care, particularly rural based physicians.

Some of the following organizations, which have expressed support for this legislation, include the National Rural Health Association, the American College of Physicians/American Society of Internal Medicine, and the American Physical Therapy association.

I ask unanimous consent that letters of support and the text of the bill be printed in the RECORD.

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

S. 881

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''Rural Equity Payment Index Reform Act of 2003''.

(b) FINDINGS.—Congress makes the following findings:

(1) Variations in the physician work adjustment factors under section 1848(e) of the Social Security Act (42 U.S.C. 1395w–4w(e)) result in a physician work payment inequity between urban and rural localities under the medicare physician fee schedule.

(2) The amount the medicare program spends on its beneficiaries varies substantially across the country, far more than can be accounted for by differences in the cost of living or differences in health status.

(3) Since beneficiaries and others pay into the program on the basis of income and wages and beneficiaries pay the same premium for part B services, these payments result in substantial cross-subsidies from people living in low payment States with conservative practice styles or beneficiary preferences to people living in higher payment States with aggressive practice styles or beneficiary preferences.

(4) Congress has been mindful of these variations when it comes to capitation payments made to managed care plans under the Medicare+Choice program and has put in place floors that increase monthly payments by more than one-third in some of the lowest payment counties over what would otherwise occur. But this change addresses only a very small fraction of medicare beneficiaries who are presently enrolled in Medicare+Choice plans operating in low payment counties.

(5) Unfortunately, Congress has only begun to address the underlying problem of substantial geographic variations in fee-for-service spending under traditional medicare.

(6) Improvements in rural hospital payment systems under the medicare program help to reduce aggregate per capita payment variation as rural hospitals are in large part located in low payment counties.

(7) Many rural communities have great difficulty attracting and retaining physicians and other skilled health professionals.

(8) Targeted efforts to provide relief to rural doctors in low payment localities would further reduce variation by improving access to primary and tertiary services along with more equitable payment.

(9) Geographic adjustment factors in the medicare program's resource-based relative value scale unfairly suppress fee-for-service payments to rural providers.

(10) Actual costs are not presently being measured accurately and payments do not reflect the costs of providing care.

(11) Unless something is done about medicare payment in rural areas, as the baby boom cohort ages into medicare, the financial demands on rural communities to subsidize care for their aged and disabled medicare beneficiaries will progress from difficult to impossible in another 10 years.

(12) The impact on rural health care infrastructure will be first felt in economically depressed rural areas where the ability to shift costs is already limited.

SEC. 2. PHYSICIAN FEE SCHEDULE WAGE INDEX REVISION.

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B) and (C)'' and inserting ''subparagraphs (B), (C), and (E)''; and

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

''(E) FLOOR FOR WORK GEOGRAPHIC INDICES.—

''(i) IN GENERAL.—Notwithstanding the work geographic index otherwise calculated under subparagraph (A)(iii), in no case may the work geographic index applied for payment under this section be less than—

''(I) 0.976 for services furnished during 2004;

''(II) 0.987 for services furnished during 2005;

''(III) 0.995 for services furnished during 2006; and

''(IV) 1.000 for services furnished during 2007 and subsequent years.

''(ii) EXEMPTION FROM LIMITATION ON ANNUAL ADJUSTMENTS.—The increase in expenditures attributable to clause (i) shall not be taken into account in applying subsection (c)(2)(B)(ii)(II).''.

NRHA SUPPORTS ''EQUAL PAY FOR EQUAL WORK''

WASHINGTON, DC., Jan. 7.—The National Rural Health Association (NRHA) today strongly endorsed legislation introduced by Representative Doug Bereuter (R.–Neb) that would provide rural physicians with Medicare payments closer to those of their urban counterparts. The Rural Equity Payment Index Reform Act addresses the little known fact that the federal government pays rural doctors at a lower rate.

''An office visit to a rural physician is no different than an office visit to an urban physician,'' NRHA President Wayne Myers, M.D., said. ''The idea that physicians are reimbursed for their work and their skills at a lower rate simply on the basis that they choose to practice in a rural area and serve our rural communities is completely ludicrous.''

The Bereuter bill would lessen the disparity that currently exists between urban and rural areas. By gradually phasing in a floor that upwardly adjusts reimbursement rates for rural providers, without lowering the reimbursement in urban areas, the discrepancy in payment will progressively be corrected. ''These health care providers put as much or even more time, skill and intensity into a patient visit as their urban counterparts,'' Rep. Bereuter said, ''yet they are paid less for their work under the Medicare program. This is a formula that is punishing non-metropolitan areas.''

Under the current Medicare physician payment formula, residents of non-metropolitan areas essentially subsidize the delivery of health care in metropolitan areas. Even though rural areas tend to have larger populations of Medicare beneficiaries, they are subsidizing health care in urban areas, while their own communities are struggling to attract health care professionals.

''This is a top priority issue for the NRHA,'' Myers said. ''In fact, this disparity in health care is among the basic reasons the NRHA exists. ''For far too long, rural American health care has been overlooked in Washington. We applaud Congressman Bereuter for his efforts and look forward to working with him to ensure rural physicians—and rural residents alike—receive an equitable deal.''

The NRHA is a national nonprofit membership organization that provides leadership on rural health issues. The association's mission is to improve the health of rural Americans and to provide leadership on rural health issues through advocacy, communications, education and research. The NRHA membership is made up of a diverse collection of individuals and organizations.

AMERICAN PHYSICAL THERAPY ASSOCIATION,
March 25, 2003.

Hon. DOUG BEREUTER (R–NE),
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN BEREUTER: The American Physical Therapy Association (APTA) would like to express its appreciation for your legislation to correct an inequity in Medicare payments to rural health care providers. APTA strongly supports HR 33, The Rural Equity Payment Index Reform (REPaIR) Act. This legislation is a positive step to ensuring improved access to quality health care services, including those delivered by licensed physical therapists, in rural America. The current inequity of payment to health care providers under the Medicare physician fee schedule and its Geographic Medical Practice Index needs to be corrected to ensure that qualified providers continue to serve the needs of our rural communities.

Physical therapists are highly qualified and recognized providers under Medicare who bill for their services under the Medicare Physician Fee Schedule. Your legislation (HR 33) would improve access and payment for appropriate physical therapy services in rural and underserved areas. This legislation would also go a long way to attract and retain physical therapist to consider rural areas for practice and service. Access to qualified health care providers is a growing problem in rural America and your legislation is one of many steps to reverse this trend.

We applaud your dedication to rural health and express our support that Congress pass HR 33, The Rural Equity Payment Index Reform (REPaIR) Act in this Congress. If you have questions, please feel free to contact Justin Moore at 703–706–3162 or *justinmoore@apta.org.*

Sincerely,

G. DAVID MASON,
Vice President, Government Affairs.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 882. A bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safeguards, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today we are introducing the Tax Administration Good Government Act.

The legislation contains five major components. First, it provides additional safeguards for taxpayers. Second, the legislation significantly simplifies the current interest and penalty regimes. Third, the Act also includes the proposals passed out of the Finance Committee on April 2, 2003 and included in a bill introduced by Senators HATCH and BREAUX to modernize the United States Tax Court.

Fourth, our legislation also includes several provisions, some of which were requested by the Treasury Department and the Joint Committee on Taxation, to strike an appropriate balance in protecting taxpayer confidentiality through disclosure reforms. Finally, the legislation takes a small, but important step toward simplification of the tax code through the elimination of obsolete provisions.

We have worked closely with the Treasury Department, the Internal Revenue Service, the National Taxpayer Advocate and the Joint Committee on Taxation to develop this package of proposals to promote good government in the administration of our tax code.

Congress's responsibility for the tax system does not stop after we pass tax law changes. We have an oversight responsibility to ensure that taxpayer rights are protected, that our tax laws are not administered counter to Congressional intent, that the judicial

body with primary jurisdiction over the tax laws has the tools necessary to provide independent review of controversies between taxpayers and the Internal Revenue Service, and to take steps to simplify the tax code whenever possible.

It is our intention to pass a package of tax administration good government proposals out of the Finance Committee in the coming months. We urge our colleagues to support this important legislation.

We also submit for the RECORD a more detailed description of the specific provisions included in the Tax Administration Good Government Act.

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

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

S. 882

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Administration Good Government Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 102. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of

an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 103. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 105. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING NATIONAL TAXPAYER ADVOCATE REVIEW.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 106. INCREASE IN PENALTY FOR BAD CHECKS OR MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after December 31, 2003.

SEC. 107. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 108. ELIMINATION OF RESTRICTION ON OFFSETTING REFUNDS FROM FORMER RESIDENTS.

Section 6402(e) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

Subtitle B—Processing and Personnel

SEC. 111. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2001 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and

(2) the consequences under such section 6511 of the failure to file a return of tax.

SEC. 112. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

Section 6103(d)(5) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

SEC. 113. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2003.

SEC. 114. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

SEC. 115. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

''(a) IN GENERAL.—Subject to subsection (c), the Commissioner shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets,

''(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

''(3) with respect to a taxpayer or taxpayer representative, the violation of—

''(A) any right under the Constitution of the United States, or

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964,

''(ii) title IX of the Education Amendments of 1972,

''(iii) the Age Discrimination in Employment Act of 1967,

''(iv) the Age Discrimination Act of 1975,

''(v) section 501 or 504 of the Rehabilitation Act of 1973, or

''(vi) title I of the Americans with Disabilities Act of 1990,

''(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative,

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery,

''(6) violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of

retaliating against, or harassing, a taxpayer or taxpayer representative,

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry,

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect,

''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect, and

''(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than termination for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in the Commissioner's sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding.

''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Termination of employment for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

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

SEC. 116. IRS OVERSIGHT BOARD APPROVAL OF USE OF CRITICAL PAY AUTHORITY.

(a) IN GENERAL.—Section 7802(d)(3) (relating to management) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(D) review and approve the Commissioner's use of critical pay authority under section 9502 of title 5, United States Code, and streamlined critical pay authority under section 9503 of such title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to personnel hired after the date of the enactment of this Act.

SEC. 117. LOW-INCOME TAXPAYER CLINICS.

(a) GRANTS FOR RETURN PREPARATION CLINICS.—

(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

''SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED RETURN PREPARATION CLINIC.—

''(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—

''(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

''(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

''(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

''(2) CLINIC.—The term 'clinic' includes—

''(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

''(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

''(c) SPECIAL RULES AND LIMITATIONS.—

''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

''Sec. 7526A. Return preparation clinics for low-income taxpayers.''.

(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.—

(1) INCREASE IN AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

''(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.''.

(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

(i) by inserting ''qualified'' before ''low-income'', and

(ii) by striking the last sentence.

(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

''(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

SEC. 118. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7527. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7527. Enrolled agents.''.

(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 119. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

(a) IN GENERAL.—Section 7508A (relating to authority to postpone certain tax-related deadlines by reason of presidentially declared disaster) is amended by adding at the end the following new subsection:

''(c) DUTIES OF DISASTER RESPONSE TEAM.—

''(1) RESPONSE TO DISASTERS.—The Secretary shall—

''(A) establish as a permanent office in the national office of the Internal Revenue Service a disaster response team composed of members, who in addition to their regular responsibilities, shall assist taxpayers in clarifying and resolving Federal tax matters associated with or resulting from any Presidentially declared disaster (as so defined), and

''(B) respond to requests by such taxpayers for filing extensions and technical guidance expeditiously.

''(2) PERSONNEL OF DISASTER RESPONSE TEAM.—The disaster response team shall be composed of—

''(A) personnel from the Office of the Taxpayer Advocate, and

''(B) personnel from the national office of the Internal Revenue Service with expertise in individual, corporate, and small business tax matters.

''(3) COORDINATION WITH FEMA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

''(4) TOLL-FREE TELEPHONE NUMBER.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

''(5) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).''.

(b) FEMA.—The Director of the Federal Emergency Management Agency shall work in coordination with the disaster response team established under section 7804(c)(1)(A) of the Internal Revenue Code of 1986 to provide timely assistance to disaster victims described in such section, including—

(1) informing the disaster response team regarding any tax-related problems or issues arising in connection with the disaster,

(2) providing the toll-free telephone number established and maintained by the Internal Revenue Service for the disaster victims in all materials provided to such victims, and

(3) providing the information described in section 7804(c)(5) of such Code on the Internet webpage of the Federal Emergency Management Agency or through a link on such webpage to the Internet webpage site of the Internal Revenue Service described in such section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 120. ACCELERATED TAX REFUNDS.

(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) elect the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 121. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

(a) STUDY.—The Secretary of the Treasury shall study—

(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,

(2) the utility of requiring taxpayers to maintain all records indefinitely,

(3) such requirement given the necessity to upgrade technological storage for outdated records,

(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service, and

(5) proposals regarding taxpayer record-keeping.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 122. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

(1) by striking all matter preceding subclause (I) of clause (ii) and inserting the following:

''(B) ANNUAL REPORT.—

''(i) IN GENERAL.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer of Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—'',

(2) by striking ''clause (ii)'' in clause (iv) and inserting ''clause (i)'', and

(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to reports in calendar year 2003 and thereafter.

Subtitle C—Other Provisions

SEC. 131. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 132. REPEAL OF PERSONAL HOLDING COMPANY TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 1 (relating to personal holding companies) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 12(2) is amended to read as follows:

''(2) For accumulated earnings tax, see part I of subchapter G (sec. 531 and following).''.

(2) Section 26(b)(2) is amended by striking subparagraph (G) and by redesignating the succeeding subparagraphs accordingly.

(3) Section 30A(c) is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) Section 41(e)(7)(E) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(5) Section 56(b)(2) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(6) Section 170(e)(4)(D) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(7) Section 111(d) is amended to read as follows:

''(d) SPECIAL RULES FOR ACCUMULATED EARNINGS TAX.—In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531—

''(1) any excluded amount under subsection (a) allowed for purposes of this subtitle (other than section 531) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 for the prior taxable year, and

''(2) where any excluded amount under subsection (a) was not allowed as a deduction for the prior taxable year for purposes of this subtitle other than section 531 but was allowable for the same taxable year under section 531, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531.''.

(8)(A) Section 316(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(B) Section 331(b) is amended by striking ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

(9) Section 341(d) is amended—

(A) by striking ''section 544(a)'' and inserting ''section 465(f)'', and

(B) by inserting before the period at the end of the next to the last sentence ''and such paragraph (2) shall be applied by inserting 'by or for his partner' after 'his family' ''.

(10) Section 381(c) is amended by striking paragraphs (14) and (17).

(11) Section 443(e) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(12) Section 447(g)(4)(A) is amended by striking ''other than—'' and all that follows and inserting ''other than an S corporation.''

(13)(A) Section 465(a)(1)(B) is amended to read as follows:

''(B) a C corporation which is closely held,''.

(B) Section 465(a)(3) is amended to read as follows:

''(3) CLOSELY HELD DETERMINATION.—For purposes of paragraph (1), a corporation is closely held if, at any time during the last half of the taxable year, more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) shall be considered an individual.''

(C) Section 465 is amended by adding at the end the following new subsection:

''(f) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of subsection (a)(3)—

''(1) STOCK NOT OWNED BY INDIVIDUAL.—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

''(2) FAMILY OWNERSHIP.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

''(3) OPTIONS.—If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

''(4) APPLICATION OF FAMILY AND OPTION RULES.—Paragraphs (2) and (3) shall be applied if, but only if, the effect is to make the corporation closely held under subsection (a)(3).

''(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP.—Stock constructively owned by

a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

''(6) OPTION RULE IN LIEU OF FAMILY RULE.—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

''(7) CONVERTIBLE SECURITIES.—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock if the effect of the inclusion of all such securities is to make the corporation closely held under subsection (a)(3). The requirement under the preceding sentence that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.''

(D) Section 465(c)(7)(B) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(E) Section 465(c)(7)(G) is amended to read as follows:

''(G) LOSS OF 1 MEMBER OF AFFILIATED GROUP MAY NOT OFFSET INCOME OF PERSONAL SERVICE CORPORATION.—Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal service corporation (as defined in section 269A(b) but determined by substituting '5 percent' for '10 percent' in section 269A(b)(2)).''

(14) Sections 508(d), 4947, and 4948(c)(4) are each amended by striking ''545(b)(2),'' each place it appears.

(15) Section 532(b) is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(16) Sections 535(b)(1) and 556(b)(1) are each amended by striking ''section 541'' and inserting ''section 541 (as in effect before its repeal)''.

(17)(A) Section 553(a)(1) is amended by striking ''section 543(d)'' and inserting ''subsection (c)''.

(B) Section 553 is amended by adding at the end the following new subsection:

''(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'active business computer software royalties' means any royalties—

''(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

''(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

''(2) ROYALTIES MUST BE RECEIVED BY CORPORATION ACTIVELY ENGAGED IN COMPUTER SOFTWARE BUSINESS.—The requirements of this paragraph are met if the royalties described in paragraph (1)—

''(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

''(B) are attributable to computer software which—

''(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

''(ii) is directly related to such trade or business.

''(3) ROYALTIES MUST CONSTITUTE AT LEAST 50 PERCENT OF INCOME.—The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

''(4) DEDUCTIONS UNDER SECTIONS 162 AND 174 RELATING TO ROYALTIES MUST EQUAL OR EXCEED 25 PERCENT OF ORDINARY GROSS INCOME.—

''(A) IN GENERAL.—The requirements of this paragraph are met if—

''(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

''(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

''(B) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

''(C) LIMITATION ON ALLOWABLE DEDUCTIONS.—For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account.''

(18) Section 561(a) is amended by striking paragraph (3), by inserting ''and'' at the end of paragraph (1), and by striking '', and'' at the end of paragraph (2) and inserting a period.

(19) Section 562(b) is amended to read as follows:

''(b) DISTRIBUTIONS IN LIQUIDATION.—Except in the case of a foreign personal holding company described in section 552—

''(1) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

''(2) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of paragraph (1), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.''

(20) Section 563 is amended by striking subsection (b).

(21) Section 564 is hereby repealed.

(22) Section 631(c) is amended by striking ''or section 545(b)(5)''.

(23) Section 852(b)(1) is amended by striking ''which is a personal holding company (as defined in section 542) or''.

(24)(A) Section 856(h)(1) is amended to read as follows:

''(1) IN GENERAL.—For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 465(a)(3) is met.''

(B) Section 856(h)(3)(A)(i) is amended by striking ''section 542(a)(2)'' and inserting ''section 465(a)(3)''.

(C) Paragraph (3) of section 856(h) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(D) Subparagraph (C) of section 856(h)(3), as redesignating by the preceding subparagraph, is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (B)''.

(25) The last sentence of section 882(c)(2) is amended to read as follows:

''The preceding sentence shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.''.

(26) Section 936(a)(3) is amended by striking subparagraph (C), by inserting ''or'' at the end of subparagraph (B), and by redesignating subparagraph (D) as subparagraph (C).

(27) Section 992(d) is amended by striking paragraph (2) and by redesignating succeeding paragraphs accordingly.

(28) Section 992(e) is amended by striking ''and section 541 (relating to personal holding company tax)''.

(29) Section 1202(e)(8) is amended by striking ''section 543(d)(1)'' and inserting ''section 553(c)(1)''.

(30) Section 1362(d)(3)(C)(iii) is amended by adding at the end the following new sentence: ''References to section 542 in the preceding sentence shall be treated as references to such section as in effect on the day before its repeal.''

(31) Section 1504(c)(2)(B) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(32) Section 2057(e)(2)(C) is amended by adding at the end the following new sentence: ''References to sections 542 and 543 in the preceding sentence shall be treated as references to such sections as in effect on the day before their repeal.''

(33) Sections 6422 is amended by striking paragraph (3) and by redesignating paragraphs (4) through (12) and paragraphs (3) through (11), respectively.

(34) Section 6501 is amended by striking subsection (f).

(35) Section 6503(k) is amended by striking paragraph (1) and by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(36) Section 6515 is amended by striking paragraph (1) and by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively.

(37) Subsections (d)(1)(B) and (e)(2) of section 6662 are each amended by striking ''or a personal holding company (as defined in section 542)''.

(38) Section 6683 is hereby repealed.

(c) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part II.

(2) The table of sections for part IV of such subchapter G is amended by striking the item relating to section 564.

(3) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6683.

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2003.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX.

(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking ''$1,000'' and inserting ''$2,000''.

(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended to read as follows:

''(a) ADDITION TO THE TAX.—

''(1) IN GENERAL.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual for a taxable year, there shall be added to the tax under chapters 1 and 2 for the taxable year the amount determined under paragraph (2) for each day of underpayment.

''(2) AMOUNT.—The amount of the addition to tax for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

''(2) DETERMINATION OF INTEREST RATE.—

''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

''(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 202. CORPORATE ESTIMATED TAX.

(a) INCREASE IN SMALL TAX AMOUNT EXCEPTION.—Section 6655(f) (relating to exception where tax is small amount) is amended by striking ''$500'' and inserting ''$1,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 203. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking ''$1,000,000'' in subparagraph (A) and inserting ''the applicable amount'',

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

''(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the applicable amount is $1,000,000 increased (but not above $1,500,000) by $50,000 for each taxable year beginning after 2004.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 204. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Section 6404(e)(1) is amended—

(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),

(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and

(3) by striking ''tax described in section 6212(a)'' in subparagraph (B) and inserting ''tax, addition to tax, or penalty imposed by this title''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after December 31, 2003.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(G) (relating to suspension of interest and certain penalties where secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 207. EXPANSION OF INTEREST NETTING.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after December 31, 2003.

SEC. 208. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

SEC. 209. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 7811 (relating to taxpayer assistance orders),

''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

''(III) section 7122 (relating to compromises).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date of the enactment of this Act.

SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 303. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 304. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 305. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's

credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) DEPUTIES AND OTHER EMPLOYEES.—The clerk may appoint necessary deputies and employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such deputies and employees shall be subject to removal by the clerk.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based

upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 312. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 313. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 314. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 315. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 316. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 317. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under subsection (a)(5) of that section shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is

deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''**AND MAGISTRATE JUDGES**'' after ''**JUDGES**''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of section for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 321. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay

for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 322. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 323. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

SEC. 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''TREASURY.—Returns and return information'' and inserting ''TREASURY.—

''(A) IN GENERAL.—Returns and return information'', and

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

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFYING NUMBER WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's identifying number)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS AND OTHER AGENTS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended—

(1) by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary'', and

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

''(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information with respect to such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in writing, electronically, or orally may be disclosed or used by such person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and shall not be disclosed or used for any other purpose.

''(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

''(4) CROSS REFERENCE.—

''For provision providing for civil damages for violation of paragraph (2), see section 7431(i).''.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SUBSECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for—

''(1) the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified in writing, electronically, or orally, or

''(2) subject to the safeguards set forth in section 6103, for purposes permitted under section 6103,

shall be treated as a violation of section 6103(a).''.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Secretary of the Treasury considers necessary or appropriate to better achieve the purposes of this section.

(d) SUNSET OF EXISTING CONSENTS.—Notwithstanding any other provision of law, any request for or consent to disclose any return or return information under section 6103(c) of the Internal Revenue Code of 1986 made before the date of the enactment of this Act shall remain in effect until the earlier of the date such request or consent is otherwise terminated or the date which is 3 taxable years after such date of enactment.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.''.

(b) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

''(j) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—A judgment for damages shall not be awarded under subsection (c) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.''.

(c) PAYMENT AUTHORITY CLARIFIED.—

(1) IN GENERAL.—Section 7431, as amended by subsection (b), is amended by adding at the end the following new subsection:

''(k) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.''.

(2) ANNUAL REPORTS OF PAYMENTS.—The Secretary of the Treasury shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 7431(k) of the Internal Revenue Code of 1986.

(d) BURDEN OF PROOF FOR GOOD FAITH EXCEPTION RESTS WITH SECRETARY.—Section 7431(b) (relating to exceptions) is amended by adding at the end the following new flush sentence:

''In any proceeding involving the issue of the existence of good faith, the burden of proof with respect to such issue shall be on the Secretary.''.

(e) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the willful unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(c) EFFECTIVE DATES.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) EXHAUSTION OF REMEDIES AND BURDEN OF PROOF.—The amendments made by subsections (b) and (d) shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

(3) PAYMENT AUTHORITY.—The amendment made by subsection (c)(1) shall take effect on the date of the enactment of this Act.

(4) REPORTS.—The amendment made by subsection (e) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B)(i) (relating to danger of death or physical injury) is amended by striking ''or State law enforcement agency'' and inserting '', State, or local law enforcement agency''.

(b) CONFORMING AMENDMENTS.—Section 6103(p)(4) is amended—

(1) by striking ''(i)(3)(B)(i) or (7)(A)(ii)'' and inserting ''(i)(7)(A)(ii)'', and

(2) by striking '', (i)(3)(B)(i),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Section 6103(m)(1) (relating to tax refunds) is amended by striking ''taxpayer identity information to the press and other media'' and by inserting ''a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,''.

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

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State

officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

''(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

''(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general,

''(ii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

''(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6103 is amended—

(A) by inserting ''or any appropriate State officer who has or had access to returns or return information under section 6104(c)'' after ''this section'' in paragraph (2), and

(B) by striking ''or subsection (n)'' in paragraph (3) and inserting ''subsection (n), or section 6104(c)''.

(2) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18) or any appropriate State officer (as defined in section 6104(c))''.

(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ''FOR CHARITABLE ORGANIZATIONS''.

(5) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

(6) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(7) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. TREATMENT OF PUBLIC RECORDS.

(a) IN GENERAL.—Section 6103(b) (relating to definitions) is amended by adding at the end the following new paragraph:

''(12) TREATMENT OF PUBLIC RECORDS.—Returns and return information shall not be subject to subsection (a) if disclosed—

''(A) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

''(B) properly made part of the public record.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 412. INVESTIGATIVE DISCLOSURES.

(a) IN GENERAL.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) INVESTIGATIVE DISCLOSURES.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 413. TIN MATCHING.

(a) IN GENERAL.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

''(10) TIN MATCHING.—The Secretary may disclose to any person required to provide a taxpayer identifying number (as described in section 6109) to the Secretary whether such information matches records maintained by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 414. FORM 8300 DISCLOSURES.

(a) IN GENERAL.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''(15),'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 415. TECHNICAL AMENDMENT.

(a) IN GENERAL.—Section 6103(i)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

SEC. 501. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS.

(a) IN GENERAL.—

(1) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—Paragraph (7) of section 1(f) is amended to read as follows:

''(7) SPECIAL RULE FOR CERTAIN BRACKETS.—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''.

(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—Paragraph (2) of section 1(h) is amended by striking ''In the case of any taxable year beginning after December 31, 2000, the'' and inserting ''The''.

(3) CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.—Section 29 is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(4) EARNED INCOME CREDIT.—Paragraph (1) of section 32(b) is amended—

(A) by striking subparagraphs (B) and (C), and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—In the case of taxable years beginning after 1995'' and moving the table 2 ems to the left.

(5) GENERAL BUSINESS CREDITS.—Subsection (d) of section 38 is amended by striking paragraph (3).

(6) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—Subsection (d) of section 39 is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

(7) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

(8) ITEMS OF TAX PREFERENCE; DEPLETION.—Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

(9) INTANGIBLE DRILLING COSTS.—

(A) Clause (i) of section 57(a)(2)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''.

(B) Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993)''.

(10) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

(A) in subsection (c)(4) by striking ''; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954'', and

(B) in subsection (g)(3) by striking ''January 1, 1954, or'' and '', whichever is later''.

(11) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking ''or (d)''.

(12) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

(13) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—

(A) by striking ''(after June 24, 1950)'' in paragraph (2), and

(B) striking ''such zone;'' and all that follows in paragraph (3) and inserting ''such zone.''.

(14) PRINCIPAL RESIDENCE.—Section 121(b)(3) is amended—

(A) by striking subparagraph (B); and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—'' and moving the text 2 ems to the left.

(15) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking ''after December 31, 1965,''.

(16) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking paragraph (6) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(17) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

(18) INTERIM AUTHORITY FOR GOVERNOR.—

(A) Section 146(e) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(B) Section 42(h)(3)(F) is amended by striking ''(other than paragraph (2)(B) thereof)''.

(19) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(g) is amended by striking the last sentence.

(20) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

(21) INTEREST.—

(A) Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) (relating to phase-in of limitation) of subsection (h).

(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.

(22) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (k).

(23) AMORTIZABLE BOND PREMIUM.—Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, with reference to the amount payable on earlier call date), and''.

(24) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(A) Section 172 is amended—

(i) by striking subparagraph (D) of subsection (b)(1) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively,

(ii) by striking subsection (g), and

(iii) by striking subparagraph (F) of subsection (h)(2).

(B) Section 172(h)(4) is amended by striking ''subsection (b)(1)(E)'' each place it appears and inserting ''subsection (b)(1)(D)''.

(C) Section 172(i)(3) is amended by striking ''subsection (b)(1)(G)'' each place it appears and inserting ''subsection (b)(1)(F)''.

(D) Section 172(j) is amended by striking ''subsection (b)(1)(H)'' each place it appears and inserting ''subsection (b)(1)(G)''.

(E) Section 172, as amended by subparagraphs (A) through (D) of this paragraph, is amended—

(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,

(ii) by striking ''subsection (h)'' each place it appears and inserting ''subsection (g)'', and

(iii) by striking ''subsection (i)'' each place it appears and inserting ''subsection (h)''.

(25) RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

''(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.''.

(26) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

(27) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

''(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''.

(28) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

(29) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—

(A) Sections 244 and 247 are hereby repealed and the table of sections for part VIII of subchapter B of chapter 1 is amended by striking the items relating to sections 244 and 247.

(B) Paragraph (5) of section 172(d) is amended to read as follows:

''(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED.—The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''.

(C) Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''.

(D) Section 243(d) is amended by striking paragraph (4).

(E) Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) in subsection (b)(1)—

(I) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears and inserting ''section 243(a)(1),'',

(II) by striking ''244(a),'' the second place it appears therein, and

(III) by striking ''subsection (a) or (b) of section 245, and 247,'' and inserting ''and subsection (a) or (b) of section 245,'', and

(iii) by striking '', 244,'' in subsection (c)(1).

(F) Section 246A is amended by striking '', 244,'' both places it appears in subsections (a) and (e).

(G) Sections 263(g)(2)(B)(iii), 277(a), 301(e)(2), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 815(c)(2)(A)(iii), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

(H) Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

(I) Section 810(c)(2)(B) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

(30) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

(31) BOND REPURCHASE PREMIUM.—Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

(32) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

(33) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking ''or acquired on or after October 8, 1940,''.

(34) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—

(A) by striking ''after December 31, 1967,'' in subsection (a)(2),

(B) by striking ''after October 9, 1969,'' in subsection (b),

(C) by striking ''after October 9, 1969, and'' in subsection (d)(5), and

(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).

(35) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

(36) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).

(37) FUNDING STANDARDS.—Section 412(m)(4) is amended—

(A) by striking ''the applicable percentage'' in subparagraph (A) and inserting ''25 percent'', and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(38) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—

(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and

(B) by amending paragraph (2) of subsection (c) to read as follows:

''(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).''.

(39) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by striking ''after December 31, 1963,''.

(40) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—

(A) by striking ''any farming syndicate (as defined in subsection (c))'' both places it appears in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and

(B) by striking subsection (g).

(41) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—

(A) Paragraph (3) of section 465(c) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''.

(B) Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

(42) NUCLEAR DECOMMISSIONING COSTS.—Section 468A(e)(2) is amended—

(A) by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and

(B) by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(43) PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.—

(A) Section 469 is amended by striking subsection (m).

(B) Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(44) ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.—Section 481(b)(3) is amended by striking subparagraph (C).

(45) EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.—Section 501 is amended by striking subsection (p).

(46) REQUIREMENTS FOR EXEMPTION.—

(A) Section 503(a)(1) is amended to read as follows:

''(1) GENERAL RULE.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.''.

(B) Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''.

(C) Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

(47) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT.—Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

(48) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—Section 692(a)(1) is amended by striking ''after June 24, 1950''.

(49) INSURANCE COMPANY TAXABLE INCOME.—

(A) Section 832(e) is amended by striking ''of taxable years beginning after December 31, 1966,''.

(B) Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

(50) TAX ON NONRESIDENT ALIEN INDIVIDUALS.—Subparagraph (B) of section 871(a)(1) is amended to read as follows:

''(B) gains described in subsection (b) or (c) of section 631,''.

(51) PROPERTY ON WHICH LESSEE HAS MADE IMPROVEMENTS.—Section 1019 is amended by striking the last sentence.

(52) INVOLUNTARY CONVERSION.—Section 1033 is amended by striking subsection (j) and by redesignating subsection (k) as subsection (j).

(53) PROPERTY ACQUIRED DURING AFFILIATION.—Section 1051 is repealed and the table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1051.

(54) HOLDING PERIOD OF PROPERTY.—

(A) Paragraph (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''.

(B) Paragraph (7) of section 1223 is amended by striking the last sentence.

(C) Paragraph (9) of section 1223 is repealed.

(55) PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ''beginning after December 31, 1981''.

(56) SALE OR EXCHANGE OF PATENTS.—Section 1235 is amended—

(A) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively, and

(B) by striking ''(d)'' in subsection (b) and inserting ''(c)''.

(57) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

(58) SALE OF PATENTS.—Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

(59) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1252(a) is amended by striking ''after December 31, 1969,'' both places it appears.

(60) TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

''(c) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

''(1) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

''(A) an amount equal to the original issue discount, or

''(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

''(2) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

''(3) CROSS REFERENCE.—

''For current inclusion of original issue discount, see section 1272.''.

(61) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1314 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(62) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''.

(63) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''.

(64) HOSPITAL INSURANCE.—Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''.

(65) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

(66) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''.

(67) AFFILIATED GROUP DEFINED.—Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

(68) DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

(A) Subsection (a) of section 1551 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Section 1551(b) is amended—

(i) by striking ''or (2)'' in paragraph (1), and

(ii) by striking ''(a)(3)'' in paragraph (2) and inserting ''(a)(2)''.

(69) DEFINITION OF WAGES.—Section 3121(b) is amended by striking paragraph (17).

(70) CREDITS AGAINST TAX.—

(A) Paragraph (4) of section 3302(f) is amended by striking ''subsection—'' and all that follows through ''(A) IN GENERAL.—'', by striking subparagraph (B), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

(B) Paragraph (5) of section 3302(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (E) as subparagraph (D).

(71) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).

(72) TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Section 4042(b)(2)(A) is amended to read as follows:

''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''.

(73) TRANSPORTATION BY AIR.—Section 4261(e) is amended—

(A) in paragraph (1) by striking subparagraph (C), and

(B) by striking paragraph (5).

(74) TAXES ON FAILURE TO DISTRIBUTE INCOME.—Section 4942 is amended—

(A) by striking subsection (f)(2)(D),

(B) in subsection (g)(2)(A) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'',

(C) in subsection (g) by striking paragraph (4), and

(D) in subsection (i)(2) by striking ''beginning after December 31, 1969, and''.

(75) TAXES ON TAXABLE EXPENDITURES.—Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

(76) RETURNS.—Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''.

(77) INFORMATION RETURNS.—Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

(78) ABATEMENTS.—Section 6404(f) is amended by striking paragraph (3).

(79) FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.—Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

(80) RETIREMENT.—Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

(81) ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.—

(A) Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939'' and by striking ''or pursuant to section 1106(d) of the Internal Revenue Code of 1939''.

(B) Subsection (g) of section 7448 is amended by striking ''or other than pursuant to section 1106 of the Internal Revenue Code of 1939''.

(C) Subsection (j)(1) and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

(82) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

(83) VALUATION TABLES.—Paragraph (3) of section 7520(c) is amended—

(A) by striking ''Not later than December 31, 1989, the'' and inserting ''The'', and

(B) by striking ''thereafter'' in the last sentence thereof.

(84) ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.—Section 7651 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(85) DEFINITION OF EMPLOYEE.—(A) Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

(2) SAVINGS PROVISION.—If—

(A) any provision amended or repealed by subsection (a) applied to—

(i) any transaction occurring before the date of the enactment of this Act,

(ii) any property acquired before such date of enactment, or

(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for tax for periods ending after such date of enactment, nothing in the amendments made by subsection (a) shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

TAX ADMINISTRATION GOOD GOVERNMENT ACT

INTRODUCED APRIL 10, 2003

I. IMPROVE TAX ADMINISTRATION AND ESTABLISH TAXPAYER SAFEGUARDS

Collection

Waiver of user fee for installment agreements using automated withdrawals. The IRS imposes a $43 user fee on taxpayers entering into an installment agreement. The proposal would waive the user fee if the taxpayer agrees to automated withdrawal of installment payments from a bank account. This proposal will help facilitate collection through automated withdrawals.

Authorize partial pay installment agreements. The proposal restores authority that the IRS had prior to 1998 to allow IRS to enter into installment agreements with taxpayers that want to resolve their tax liability but cannot afford to make payments large enough to fully pay the liability at the end of the term of the installment agreement. The proposal would permit the collection of taxes from cases that are otherwise placed in the currently not collectible inventory.

Terminate installment agreements for failure to file returns and failure to make tax deposits. The proposal would stop the downward spiral where taxpayers owe more and the Government collects less. Although a significant number of taxpayers violate the terms of their installment agreements by failing to timely file their tax returns or make required Federal tax deposits, the IRS is not permitted to terminate installment agreements for these reasons.

Remove $50,000 threshold requirement for office of chief counsel review of offers in compromise—IRC section 7122(b). The proposal would remove the dollar threshold and give IRS discretion in determining when a Chief Counsel opinion is necessary. IRS attorneys are presently required to review offers where the tax assessed, including penalties and interest, exceeds $50,000. As a practical matter, IRS lawyer offer little in the way of review and often contribute to the delay in processing OICs.

Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review. The proposal provides additional time, without tolling the statute of limitations, for review by the National Taxpayer Advocate for taxpayer assistance orders.

Increase Penalty for Bad Checks. Proposal would increase penalty for bad checks to $20 or 2 % of amount over $1,000.

Allow the Financial Management Service to Retain Transaction Fees from Levied Amounts. Proposal would allow FMS to retain directly a portion of the levied funds as payment of FMS fees. A delinquent taxpayer, however, would receive full credit for the amount levied upon (i.e., the amount credited to a taxpayer's account would not be reduced by FMS's fee). The IRS pays FMS fees out of its own appropriations. The proposal would alter internal government accounting and allow the use of appropriated funds to administer the tax system.

Elimination or Restriction on Offsetting Refunds from former residents. The proposal would allow States to offset Federal tax refunds owed by former residents. In 1998, Congress authorized the state refund offset program. However, the provision did not authorize states to offset Federal tax refunds for State tax debts owed by former residents who had subsequently moved to another State. Former residents have the same safeguards as residents in these situations and there is strong precedence that clearly gives States authority to impose and collect taxes on former residents.

Processing and Personnel

Explanation of Statute of Limitations and Consequences of Failure to Timely File. The proposal would require the IRS to provide taxpayers with an explanation of the consequences of failing to timely file refund claims.

Disclosure of tax information to facilitate combined employment tax reporting. The proposal would expand and make permanent the disclosure authority of the IRS to permit disclosures of name, address, taxpayer identification number, and signature to any State entity for purposes of carrying out a combined federal and state employment tax reporting program. Under current law, no tax information may be furnished by the Internal Revenue Service to another agency except as permitted under section 6103 which requires the other agency to establish procedural safeguards satisfactory to the IRS. A pilot program was established in 1997 in the State of Montana to assess the feasibility and desirability of expanding combined reporting. Reports from Montana were very positive about the program.

Expansion of declaratory judgment remedy to tax-exempt organizations. The proposal would extend declaratory judgment procedures similar to those currently available only to charities under section 7428 to other section 501(c) determinations. The proposal would limit jurisdiction over controversies involving such determinations to the United States Tax Court. In addition, the proposal would modify the present-law declaratory judgment procedures to provide that an organization is deemed to have exhausted its administrative remedies under the declaratory judgment procedures at the expiration of (1) 270 days after the date on which the request for a determination was made, or (2) in the case of a failure by any office of the IRS to make a determination (other than the office responsible for initial determinations with respect to the issue), 450 days after the date on which the request for a determination was made. The proposal would also require the organization to take, in a timely manner, all reasonable steps to secure such determination.

Amendment to Treasury auction reforms. The proposal would permit earlier disclosure upon the release by the Secretary of the minutes of the meeting. Under current law, members of the Treasury Borrowing Advisory Committee are prohibited from disclosing anything relating to the securities to be auctioned in a midquarter refunding by the Secretary until the Secretary makes a public announcement of the refunding.

Revisions relating to termination of employment of IRS employee misconduct. Proposal would modify section 1203 by removing the late filing of refund returns from the list of violations and removing employee versus employee acts (i.e. for violation of an employee's rather than a taxpayer's Constitutional or civil rights) from the list of violations.

IRS Oversight Board approval of use of critical pay authority. The proposal would require IRS Oversight Board review and approve the use of critical pay authority. Critical pay allows the IRS to hire employees critical to the mission of the IRS as well as allow the IRS to hire up to 40 individuals for four year terms under streamlined procedures.

Low-income taxpayer clinics. The proposal would increase the authorization for low-income taxpayer controversy clinics to $10 million and authorize a similar grant program for low-income taxpayer preparation clinics for $10 million. The proposal would specify that grants may not be used for any purpose other than those specified in the Code (this restriction would be inapplicable to funds from other sources). The proposal would also authorize the IRS to promote the benefits and encourage the use of low-income taxpayer clinics.

Enrolled agents. The proposal would add a new section to the Code permitting the Secretary to prescribe regulations to regulate the conduct of enrolled agents in regard to their practice before the IRS and to permit enrolled agents meeting the Secretary's qualifications to use the credentials or designation ''enrolled agent'', ''EA'', or ''E.A.''.

Establishment of disaster response team. Proposal would require the IRS to establish a permanent Disaster Response Team which, in coordination with the Federal Emergency Management Agency, is to assist taxpayers in clarifying and resolving tax matters associated with a Presidentially declared disaster or a terroristic or military action. The Team is to be staffed by IRS employees with a relevant knowledge and experience, including a representative from the Office of the Taxpayer Advocate.

Accelerated tax refunds. Proposal would require the Secretary of Treasury to study and report to the tax writing committees on options to accelerate tax refunds for taxpayers who maintain the same filing characteristics and elect the direct option for any refund.

Study on clarifying record-keeping responsibilities. The proposal would require the Secretary of the Treasury to study the scope of records required to be maintained by taxpayers, the utility of requiring taxpayers to maintain records indefinitely, the taxpayer burden incurred by such requirement given the necessity to upgrade technological storage for outdated records, the number of negotiated records retention agreements requested by taxpayers and the number entered into by the IRS, and proposals regarding taxpayer record-keeping. Under current law, every person liable for any tax imposed by the Code, or for any collection thereof, shall keep such records as the Secretary of the Treasury may from time to time prescribe.

Streamline National Taxpayer Advocate Annual Reports. Each year, the National Taxpayer Advocate is required to issue two reports to Congress: (1) an annual report on

objectives of the Advocate for the year due June 30 and (2) an annual report on the Advocate's activities including the 20 most serious problems confronting taxpayers. The Advocate's office spends an enormous amount of time and effort preparing these reports. The proposal would streamline the reporting process by requiring the Advocate to issue only one report each year.

Penalty on failure to report interests in foreign financial accounts. The proposal would establish a $5,000 penalty for non-willful failure to report interest in foreign bank accounts. Under present law there is only a penalty of $25,000 for willful failures.

Repeal of personal holding company tax. The proposal would repeal the personal holding company (PHC) tax. Subsequent changes in the tax code resulted in the provisions ineffectiveness as originally intended.

II. SIMPLIFICATION OF INTEREST AND PENALTY REGIMES

Individual estimated tax. The proposal simplifies the individual estmated tax penalty including, increase the penalty threshold for individuals to $2,000 from $1,000; apply one interest rate per estimated tax underpayment; and adopt 365-day year.

Corporate estimated tax. The proposal simplifies the corporate estimated tax penalty by increasing the exception for small amount of tax shown on the return from less than $500 to less than $1,000.

Increase in large corporation threshold for estimated tax payments. The proposal simplifies the corporate estimated tax by expanding the safe harbor exception used by small corporations by increasing the threshold from $1 million to $1.5 million of taxable income.

Expansion of interest abatement. The proposal would: (1) expand the circumstances in which interest may be abated to include periods attributable to any unreasonable IRS error or delay and (2) allow the abatement of interest to the extent interest is attributable to the taxpayer's reliance on written statement by the IRS.

Deposits made to stop the running of interest. Proposal would permit deposits to be made to an interest bearing account within Treasury to cover tax underpayments related to issues potentially subject to dispute with the IRS.

Freeze provision regarding suspension of interest where Secretary fails to contact taxpayer. The proposal would repeal current law which requires the suspension of interest on taxes owed until 21 days after the IRS sends a notice of deficiency. The suspension is triggered if the IRS fails to contact the taxpayer within 1 year for taxable years after January 1, 2004 or 18 months for taxable years before January 1, 2004. The proposal is unnecessary with expanded interest abatement.

Expansion of interest netting. Applies interest netting rules without regard to the 45-day period in which the Secretary may refund an overpayment of tax without the payment of interest.

Clarification of application of Federal tax deposit penalty. The proposal would clarify that the 10 percent penalty rate only applies in cases where the failure to deposit extends for more than 15 days.

Frivolous tax submissions. The proposal would increase the penalty for frivolous tax returns from $500 to $5,000. In addition, the proposal would permit the IRS to dismiss requests for Collection Due Process hearings, installment agreements, offers-in-compromise, and taxpayer assistance orders if they are based on frivolous arguments or are intended to delay or impede tax administration. Individuals submitting such requests are subject to a $5,000 penalty for repeat behavior or failure to withdraw the request after being given the opportunity to do so.

III. U.S. TAX COURT MODERNIZATION

Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. This provision consolidates judicial review of collection due process activity in the Tax Court.

Authority for special trial judges to hear and decide certain employment status cases. This provision clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c).

Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to asset an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This provision confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Court and the Court of Federal Claims.

Tax Court filing fee in all cases commenced by filing petition. This provision clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a $60 filing fee for all cases commenced by petition. The proposal would eliminate the need to amend section 7451 each time the Tax Court is granted new jurisdiction.

Amendments to appoint employees. Currently, the Tax Court has to go to the executive branch, the Office of Personnel Management, to change a position. It is inappropriate to require the Tax Court to seek permission from the executive since that branch is a party (Commissioner of Internal Revenue) before the Tax Court. This change would allow the Tax Court to be independent in fact and perception from the Executive Branch while ensuring that basic employee rights, protections, and remedies are retained or required in an appropriate way (e.g., whistleblower protection, civil rights, merit system principles, etc.).

Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to $30 per year and to use these fees to pursue disciplinary matters. The provision expands use of these fees to provide services to pro se taxpayers. Fees could be used for education programs for pro se taxpayers.

Annuities for survivors of Tax Court judges who are assassinated. The reality is that many people do not like to pay taxes. there is as much risk of a Tax Court judge being assassinated as any other Federal judge. The proposal would conform the treatment of Tax Court judges to District Court judges.

Cost-of-living adjustments for Tax Court judicial survivor annuities. All Federal employees have this provision except the Tax Court. Survivors of Tax Court judges are subject to an obsolete method of indexing.

Life insurance coverage for Tax Court judges. This simply codifies current Office of Personnel Management interpretation, as was previously done for District Court judges.

Cost of life insurance coverage for Tax Court judges age 65 or over. Congress established the Tax Court in 1969 and required that Tax Court judges receive the same compensation as District Court judges. The District Court judges were given this benefit to ensure that there was no diminution of their compensation (as required by the Constitution). This provision is in keeping with the original intent of Congress.

Modification of timing of lump-sum payment of judge's accrued annual leave. District Court judges are allowed to receive a lump-sum payment due to the life-time tenure of Article III judges. Tax Court judges, while they have a 15 year term, effectively have a life-time term because they are always subject to recall.

Participation of Tax Court judges in the Thrift Savings Plan. The proposal would allow Tax Court judges to participate in Thrift Savings Plan. Currently, only 19 federal government employees are left out of the Thrift Savings Plan (i.e., Tax Court judges).

Exemption of teaching compensation of retired judges for limitation on outside earned income. After retirement, Tax Court judges should have the same ability to teach as District Court judges.

General provisions relating to magistrate judges of the Tax Court. ''Magistrate'' is more recognizable to the American public because it is the term used by Article III courts. The provision changes the term ''Special Trial Judge'' to ''Magistrate Judge of the United States Tax Court'' and provides for alignment of term of office and removal applicable to District Court magistrate judges.

Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court. This section gives Magistrates/Special Trial Judges the same advantages as Tax Court judges, thus ensuring a greater pool of participants in the fund.

Retirement and annuity program for magistrate judges. A retirement and annuity program more aligned with District Court Magistrates and the Tax Court judges is key for attracting and retaining qualified judges.

Incumbent magistrate judges of the Tax Court. The provision provides transition rules similar to those given to the District Court magistrate judges.

Provisions for recall. Article III judges are ''self-recalling'' (i.e., they decide for themselves whether they are recalled or not). In contrast, Tax Court judges are subject to provisions that authorize mandatory recall by the Chief Judge. These provisions authorize the recall of Magistrates/Special Trial judges in a manner similar to those now applicable to the regular judges of the Court.

IV. CONFIDENTIALITY AND DISCLOSURE REFORMS

Clarification of definition of church tax inquiry. The proposal would clarify that the present-law church tax inquiry procedures do not apply to contacts made by the IRS for the purpose of educating churches with respect to the law governing tax-exempt organizations. For example, the proposal clarifies that the IRS does not violate the church tax inquiry procedures when written materials are provided to a church or churches for the purpose of educating such church or churches with respect to the types of activities that are not permissible under section 501(c)(3).

Collection activities with respect to joint return disclosable to either spouse based on oral request. The proposal would eliminate the requirement for former spouses to make a written request for disclosure of collection activities with respect to a joint return. Under present law, section 6103(e)(7) permits the IRS to disclose return information to the same persons who may have access to a return under the other provisions of section 6103(e), thus either spouse may obtain return information regarding a joint return upon oral request.

Taxpayer representatives not subject to examination on sole basis of representation of taxpayers. The proposal would clarify that

an IRS employee conducting an examination of a taxpayer is not authorized to inspect a taxpayer representative's return or return information solely on the basis of the representative relationship to the taxpayer. Under the proposal, the supervisor of the IRS employee would be required to approve such inspection after making a determination that other grounds justified such an inspection. The proposal would not affect the ability of employees of the IRS Director of Professional Responsibility, or other employees whose assigned duties concern the regulation of practice before the IRS, to access returns and return information of a representative.

Prohibition of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise. The proposal would prohibit the disclosure of the taxpayer identification number as part of the publicly available summaries of accepted offers in compromise.

Compliance by contractors with confidentiality safeguards. The proposal would require that a State or Federal agency conduct on-site reviews of all of its contractors receiving Federal returns and return information every three years. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the proposal, the State or Federal agency would be required to submit a report of its findings to the IRS and certify annually that all contractors are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information.

Higher standards for requests for and consents to disclosure. The proposal would render invalid a consent that does not designate a recipient or is not dated at the time of execution. The person submitting the consent to the IRS would be required to verify under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. Inspection or disclosure of a return or return information pursuant to an invalid consent would be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7431, and criminal penalties under section 7213 or 7213A for willful unauthorized disclosure or inspection.

Civil damages for unauthorized inspection or disclosure. The proposal would require the IRS to notify a taxpayer at the point of proposed administrative action as to disciplinary or adverse action against an employee arising from the unauthorized inspection or disclosure of the taxpayer's return or return information.

Expanded disclosure in emergency circumstances. The proposal would permit disclosure to local law enforcement authorities emergency situations including suicide threats.

Disclosure of taxpayer identity for tax refund purposes.—On April 15, 2002, about 1.7 million people who did not file their 1998 income tax return who lose more than $2.3 billion in tax refunds. When the IRS is unable to find a taxpayer due a refund, present law provides that it may use ''the press or other media'' to notify the taxpayer of the refund. The IRS believes the current statutory framework in Section 6103(m) does not permit disclosure via the Internet. The proposal would allow the IRS to use any means of ''mass communicating,'' including the Internet to notify a taxpayer of an undelivered refund.

Disclosure to State officials of proposed actions related to section 501(c) organizations. The proposal provides that upon written request by an appropriate State officer, the Secretary may disclose: (1) a notice of proposed refusal to recognize an organization as a section 501(c)(3) organization; (2) a notice of proposed revocation of tax-exemption of a section 501(c)(3) organization; (3) the issuance of a proposed deficiency of tax imposed under section 507, chapter 41, or chapter 42; (4) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as section 501(c)(3) organizations; and (5) returns and return information of organizations with respect to which information has been disclosed under (1) through (4) above. Disclosure or inspection is permitted for the purpose of, and only to the extent necessary in, the administration of State laws regulating section 501(c)(3) organizations, such as laws regulating tax-exempt status, charitable trusts, charitable solicitation, and fraud.

Treatment of public records. The proposal clarifies that public record data (e.g., press releases re criminal cases) does not retain 6103 protections in the files of the IRS.

Investigative disclosures. The proposal permits the IRS Criminal Investigation agents to identify themselves, organizational affiliation, and criminal nature of investigation when contacting third parties in writing or in person.

TIN matching. The proposal permits taxpayer identification number (TIN) verification by persons required to provide the information to the IRS (limited to whether information matches) to permit early error resolution and enhance compliance. Under present law, over 30 million information returns are received by the IRS from payors that contain missing or incorrect name and TIN information. However, the IRS is only permitted to disclose the error to the payor at the point at which the payment is subject to backup withholding.

Form 8300 disclosures. The proposal ensures that the Form 8300 (for reporting transactions in excess of $10,000) can be disclosed to law enforcement in the same manner as financial reporting documents required under the Bank Secrecy Act (under Title 31).

V. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

1. Adjustments in tax tables so that inflation will not result in tax increases. Paragraph (7) of section 1(f) is amended to read as follows: ''(7) Special rule for certain brackets—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent bracket begins or at which the 39.6 rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''

2. Reduced capital gain rates for qualified 5-year gain. Paragraph (2) of section 1(h) is amended by striking ''In the case of taxable years beginning after December 31, 2000, the'' and inserting ''The''.

3. Credit for producing fuel from nonconventional source. Section 29 is amended by striking subsection (e).

4. Earned income credit. Paragraph (1) of section 32(b) is amended by striking subparagraphs (B) and (C) and by striking ''(A) In General. In the case of taxable years beginning after 1995:''.

5. General business credits. Subsection (d) of section 38 is amended by striking paragraph (3).

6. Carryback and carryforward of unused credits. Section 39 is amended by striking subsection (d).

7. Adjustments based on adjusted current earnings. Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

8. Items of tax preference; Depletion. Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

9. Intangible drilling costs. Clause (i) of section 57(a)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''. Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993''.

10. Annuities; certain proceeds of endowment and life insurance contracts. Paragraph (4) of section 72(c) is amended by striking ''under the contract'' and all that follows and inserting'' under the contract.'' Paragraph (3) of section 72(g) is amended by striking ''January 1, 1954, or''.

11. Accident and health plans. Section 105(f) is amended by striking ''or (d)''.

12. Flexible spending arrangements. Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

13. Certain combat zone compensation of members of the Armed Forces. Subsection (c) of section 112 is amended by striking ''(after June 24, 1950)'' in paragraph (2), and striking ''such zone,'' and all that follows in paragraph (3) and inserting ''such zone.''

14. Principal residence. Section 121(b)(3) is amended by striking subparagraph (B).

15. Certain reduced uniformed services retirement pay. Section 112(b)(1) is amended by striking ''after December 31, 1965,''.

16. Great plains conservation program. Section 126(a) is amended by striking paragraph (6).

17. Mortgage revenue bonds—Federal disaster area modifications. Eliminate special qualified mortgage bond rules or residences located in Federal disaster areas. (utility expired January 1, 1999).

18. Interim authority for governors regarding allocation of private activity bond volume limits. Eliminate temporary gubernatorial authority to allocate the volume limit.

19. Treble damage payments under the antitrust law. Section 162(g) is amended by striking the last sentence.

20. State legislators' travel expenses away from home. Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

21. Interest. Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) of subsection (h). Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii) respectively.

22. Charitable, etc., contributions and gifts. Section 170 is amended by striking subsection (k).

23. Amortizable bond premium. Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), and''

24. Net operating loss carrybacks and carryovers. Section 172 is amended by striking subparagraph (D) of subsection (b)(1), subsection (g), and subparagraph (F) of the paragraph (h)(2).

25. Research and experimental expenditures. Subparagraph (A) of section 174(a)(2) is amended to read as follows: ''(A) Without

consent.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (l) are paid or incurred.''

26. Amortization of certain research and experimental expenditures. Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

27. Soil and water conservation expenditures. Paragraph (1) of section 175(d) is amended to read as follows: ''(1) Without consent.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''

28. Activities not engaged in for profit. Section 183(e)(1) is amended by striking the last sentence.

29. Dividends received on certain preferred stock; and Dividends paid on certain preferred stock of public utilities. Sections 244 and 247 are repealed. Paragraph (5) of section 172(d) is amended to read as follows:

''(5) Computation of deduction for dividends received. The deductions allowed by section 243 and 245 shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''

Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''

Section 243(d) is amended by striking paragraph (4).

Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears in subsection (b)(1) and inserting ''section 243(a)(1),'' and by striking ''244(a),'' the second place it appears therein, and

(iii) by striking in subsection (c)(1).

Section 246A is amended by striking ''244'' in subsections (a) and (e).

Sections 277(a), 301(e), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

Section 810(c)(2) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

30. Organization expenses. Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

31. Bond repurchase premium. Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

32. Amount of gain where loss previously disallowed. Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

33. Acquisitions made to evade or avoid income tax. Paragraphs (1) and (2) of section 269 are each amended by striking ''or acquired on or after October 8, 1940,''.

34. Interest on indebtedness incurred by corporations to acquire stock or assets of another corporation. Section 279 is amended—(A) by striking ''after December 31, 1967,'' in subsection (a)(2), (B) by striking ''after October 9, 1969,'' in subsections (b), (C) by striking ''after October 9, 1969, and'', and (D) by striking subsection (i) and redesignating subsection (j) as subsection (i).

35. Special rules relating to corporate preference items. Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

36. Qualifications for tax credit employee stock ownership plan. Section 409 is amended by striking subsections (a), (g), and (p).

37. Funding standards. Section 412(m)(4) is amended by striking ''the applicable percentage'' in subparagraph (A) and by inserting ''25 percent'', and by striking subparagraph (C).

38. Retiree health accounts. Section 420 is amended by striking subsections (b)(4) and (c)(2)(B).

39. Employee stock purchase plans. Section 423(a) is amended by striking ''after December 31, 1963,''.

40. Limitation on deductions for certain farming. Section 464 is amended by striking ''any farming syndicate (as defined in subsection (c))'' in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and by striking subsections (c) and (g).

41. Deductions limited to amount at risk. Paragraph (3) of section 465(c)(3) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''. Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

42. Nuclear decommissioning costs. Section 468A(e)(2) is amended by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and by striking subparagraph (B).

43. Passive activity losses and credits limited. Section 469 is amended by striking subsection (m). Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

44. Adjustments required by changes in method of accounting. Section 481(b)(3) is amended by striking subparagraph (C).

45. Exemption from tax on corporations, certain trusts, etc. Section 501 is amended by striking subsection (p).

46. Requirements for exemption. Section 503(a)(1) is amended to read as follows: ''(1) General rule.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.'' Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''. Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

47. Amounts received by surviving annuitant under joint and survivor annuity contract. Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

48. Income taxes of members of Armed Forces on death. Section 692(a)(1) is amended by striking ''after June 24, 1950''.

49. Insurance company taxable income. Section 832(e)(1) is amended by striking ''of taxable years beginning after December 31, 1966,'' Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

50. Tax on nonresident alien individuals. Subparagraph (B) of section 871(a)(1) is amended to read as follows: ''(B) gains described in section 631(b) or (c),''.

51. Property on which lessee has made improvements. Section 1019 is amended by striking the last sentence.

52. Involuntary conversion. Section 1033 is amended by striking subsection (j).

53. Property acquired during affiliation. Section 1051 is repealed.

54. Holding period of property. Paragraphs (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''. Paragraph (7) of section 1223 is amended by striking the last sentence. Paragraph (9) of section 1223 is repealed.

55. Property used in the trade or business and involuntary conversions. Paragraph (2) of section 1231(c) is amended by striking ''beginning after December 31, 1981''.

56. Sale or exchange of patents. Section 1235 is amended by striking subsection (c) and redesignating subsections (d) and (e) as (c) and (d) respectively.

57. Dealers in securities. Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

58. Sale of patents. Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

59. Gain from disposition of farm land. Subparagraph (a) of section 1252 is amended by striking ''after December 31, 1969,''.

60. Treatment of amounts received on retirement or sale or exchange of debt instruments. Subsection (c) of section 1271 is amended by striking paragraph (1).

61. Amount and method of adjustment. Section 1314 is amended by striking subsection (d).

62. Election; revocation; termination. Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''

63. Old-age, survivors, and disability insurance. Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''

64. Hospital insurance. Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''

65. Ministers, members of religious orders, and Christian Science practitioners. Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

66. Withholding of tax on nonresident aliens. The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking the ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''

67. Affiliated group defined. Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

68. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit. Subsection (a) of section 1551 is amended—

(1) by striking paragraph (1) and designating paragraphs (2) and (3) as (1) and (2) respectively, and

(2) by striking ''(2) or (3)'' and inserting ''(1) or (2)''.

Subsection (b) of section 1551 is amended by striking ''or (2)''.

69. Definition of wages. Section 3121(b) is amended by striking paragraph (17).

70. Credits against tax. Section 3302(f) is amended by striking paragraphs (4)(B) and (5)(D).

71. Domestic service employment taxes. Section 3510(b) is amended by striking paragraph (4).

72. Tax on fuel used in commercial transportation on inland waterways. Section 4042(b)(2)(A) is amended to read as follows: ''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''

73. Transportation by air. Section 4261(e) is amended by striking paragraphs (1)(C) and (5).

74. Taxes on failure to distribute income. Section 4942 is amended—

(1) by striking subsection (f)(2)(D),

(2) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'' in subsection (g)(2)(A),

(3) by striking subsection (g)(4), and

(4) by striking ''after December 31, 1969, and'' in subsection (i)(2).

75. Taxes on taxable expenditures. Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

76. Returns. Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''

77. Information returns. Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

78. Abatements. Section 6404(f) is amended by striking paragraph (3).

79. Failure by corporation to pay estimated income tax. Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

80. Retirement. Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

81. Annuities to surviving spouses and dependent children of judges. Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939''.

Subsectin (g) of section 7448 is amended by striking ''or other than pursuant to section 106 of the Internal Revenue Code of 1939''.

Subsection (j)(1)(B) and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

82. Merchant Marine capital construction funds. Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

83. Valuation tables. Paragraph (3) of section 7520(c) is amended by striking ''not later than December 31, 1989, the'' and inserting ''The''.

84. Administration and collection of taxes in possessions. Section 7561 is amended by striking paragraph (4).

85. Definition of employee. Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

Effective Date.—

General Rule.—Except as otherwise provided in this part, the amendments made by this part shall take effect of the date of enactment of this Act.

Savings Provision.—If

(1) any provision amended or repealed by this part applied to—

(a) any transaction occurring before the date of the enactment of this Act,

(b) any property acquired before such date of enactment, or

(c) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect the liability for tax for periods ending after such date of enactment, nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

By Mr. BREAUX (for himself, Mr. CHAFEE, Mr. BINGAMAN, Ms. LANDRIEU, Mr. LIEBERMAN, Mrs. CLINTON, Mr. MILLER, and Mr. GRAHAM of Florida):

S. 883. A bill to amend title XIX of the Social Security Act to revise and simplify the transitional medical assistance (TMA) program; to the Committee on Finance.

Mr. BREAUX. Mr. President, I ask unamimous 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. 883

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 ''Transitional Medical Assistance Improvement Act of 2003''.

SEC. 2. REVISION AND SIMPLIFICATION OF THE TRANSITIONAL MEDICAL ASSISTANCE PROGRAM (TMA).

(a) OPTION OF CONTINUOUS ELIGIBILITY FOR 12 MONTHS; OPTION OF CONTINUING COVERAGE FOR UP TO AN ADDITIONAL YEAR.—

(1) OPTION OF CONTINUOUS ELIGIBILITY FOR 12 MONTHS BY MAKING REPORTING REQUIREMENTS OPTIONAL.—Section 1925(b) of the Social Security Act (42 U.S.C. 1396r–6(b)) is amended—

(A) in paragraph (1), by inserting '', at the option of a State,'' after ''and which'';

(B) in paragraph (2)(A), by inserting ''Subject to subparagraph (C):'' after ''(A) NOTICES.—'';

(C) in paragraph (2)(B), by inserting ''Subject to subparagraph (C):'' after ''(B) REPORTING REQUIREMENTS.—'';

(D) by adding at the end the following new subparagraph:

''(C) STATE OPTION TO WAIVE NOTICE AND REPORTING REQUIREMENTS.—A State may waive some or all of the reporting requirements under clauses (i) and (ii) of subparagraph (B). Insofar as it waives such a reporting requirement, the State need not provide for a notice under subparagraph (A) relating to such requirement.''; and

(E) in paragraph (3)(A)(iii), by inserting ''the State has not waived under paragraph (2)(C) the reporting requirement with respect to such month under paragraph (2)(B) and if'' after ''6-month period if''.

(2) STATE OPTION TO EXTEND ELIGIBILITY FOR LOW-INCOME INDIVIDUALS FOR UP TO 12 ADDITIONAL MONTHS.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended—

(A) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(B) by inserting after subsection (b) the following new subsection:

''(c) STATE OPTION OF UP TO 12 MONTHS OF ADDITIONAL ELIGIBILITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, each State plan approved under this title may provide, at the option of the State, that the State shall offer to each family which received assistance during the entire 6-month period under subsection (b) and which meets the applicable requirement of paragraph (2), in the last month of the period the option of extending coverage under this subsection for the succeeding period not to exceed 12 months.

''(2) INCOME RESTRICTION.—The option under paragraph (1) shall not be made available to a family for a succeeding period unless the State determines that the family's average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) as of the end of the 6-month period under subsection (b) does not exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

''(3) APPLICATION OF EXTENSION RULES.—The provisions of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply to the extension provided under this subsection in the same manner as they apply to the extension provided under subsection (b)(1), except that for purposes of this subsection—

''(A) any reference to a 6-month period under subsection (b)(1) is deemed a reference to the extension period provided under paragraph (1) and any deadlines for any notices or reporting and the premium payment periods shall be modified to correspond to the appropriate calendar quarters of coverage provided under this subsection; and

''(B) any reference to a provision of subsection (a) or (b) is deemed a reference to the corresponding provision of subsection (b) or of this subsection, respectively.''.

(b) STATE OPTION TO WAIVE RECEIPT OF MEDICAID FOR 3 OF PREVIOUS 6 MONTHS TO QUALIFY FOR TMA.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)) is amended by adding at the end the following: ''A State may, at its option, also apply the previous sentence in the case of a family that was receiving such aid for fewer than 3 months, or that had applied for and was eligible for such aid for fewer than 3 months, during the 6 immediately preceding months described in such sentence.''.

(c) ELIMINATION OF SUNSET FOR TMA.—

(1) Subsection (g) of section 1925 of such Act (42 U.S.C. 1396r–6), as redesignated under subsection (a)(2), is repealed.

(2) Section 1902(e)(1) of such Act (42 U.S.C. 1396a(e)(1)) is amended by striking ''(A) Notwithstanding'' and all that follows through ''During such period, for'' in subparagraph (B) and inserting ''For''.

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by subsections (a)(2)(A) and (c)(1), is amended by inserting after subsection (f) the following:

''(g) ADDITIONAL PROVISIONS.—

''(1) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—Each State shall—

''(A) collect and submit to the Secretary, in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section; and

''(B) make such information publicly available.

Such information shall be submitted under subparagraph (A) at the same time and frequency in which other enrollment information under this title is submitted to the Secretary. Using such information, the Secretary shall submit to Congress annual reports concerning such rates.''.

(e) COORDINATION OF WORK.—Section 1925(g) of such Act (42 U.S.C. 1396r–6(g)), as added by subsection (d), is amended by adding at the end the following new paragraph:

''(2) COORDINATION WITH ADMINISTRATION FOR CHILDREN AND FAMILIES.—The Administrator of the Centers for Medicare & Medicaid Services, in carrying out this section, shall work with the Assistant Secretary for the Administration for Children and Families to develop guidance or other technical assistance for States regarding best practices in guaranteeing access to transitional medical assistance under this section.''.

(f) ELIMINATION OF TMA REQUIREMENT FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—

(1) IN GENERAL.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended by adding at the end the following:

''(h) PROVISIONS OPTIONAL FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—A State may meet (but is not required to meet) the requirements of subsections (a) and (b) if it provides for medical assistance under section 1931 to families (including both children and caretaker relatives) the average gross monthly earning of which (less such costs for such child care as is necessary for the employment of a caretaker relative) is at or below a level that is at least 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.''.

(2) CONFORMING AMENDMENTS.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended, in subsections (a)(1) and (b)(1), by inserting '', but subject to subsection (h),'' after ''Notwithstanding any other provision of this title,'' each place it appears.

(g) REQUIREMENT OF NOTICE FOR ALL FAMILIES LOSING TANF.—Subsection (a)(2) of section 1925 of such Act (42 U.S.C. 1396r–6) is amended by adding at the end the following flush sentences:

''Each State shall provide, to families whose aid under part A or E of title IV has terminated but whose eligibility for medical assistance under this title continues, written notice of their ongoing eligibility for such medical assistance. If a State makes a determination that any member of a family whose aid under part A or E of title IV is being terminated is also no longer eligible for medical assistance under this title, the notice of such determination shall be supplemented by a 1-page notification form describing the different ways in which individuals and families may qualify for such medical assistance and explaining that individuals and families do not have to be receiving aid under part A or E of title IV in order to qualify for such medical assistance. Such notice shall further be supplemented by information on how to apply for child health assistance under the State children's health insurance program under title XXI and how to apply for medical assistance under this title.''.

(h) EXTENDING USE OF OUTSTATIONED WORKERS TO ACCEPT APPLICATIONS FOR TRANSITIONAL MEDICAL ASSISTANCE.—Section 1902(a)(55) of such Act (42 U.S.C. 1396a(a)(55)) is amended by inserting ''and under section 1931'' after ''(a)(10)(A)(ii)(IX)''.

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 2002.

(2) NOTICE.—The amendment made by subsection (g) shall take effect 6 months after the date of enactment of this Act.

(3) DELAY PERMITTED FOR STATE PLAN AMENDMENT.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

By Ms. LANDRIEU (for herself, Mr. NELSON of Nebraska, Mr. SHELBY, Mrs. LINCOLN, Mrs. HUTCHISON, Mr. JOHNSON, Mr. BUNNING, and Mr. REID):

S. 884. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

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

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

S. 884

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 ''Consumer Rental-Purchase Agreement Act of 2003''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the rental-purchase industry provides a service that meets and satisfies the demands of many consumers;

(2) each year, approximately 2,300,000 United States households enter into rental-purchase transactions, and over a 5-year period, approximately 4,900,000 United States households will do so;

(3) competition among the various firms engaged in the extension of rental-purchase transactions would be strengthened by informed use of rental-purchase transactions; and

(4) the informed use of rental-purchase transactions results from an awareness of the cost thereof by consumers.

(b) PURPOSES.—The purposes of this Act are to assure the availability of rental-purchase transactions; and to assure simple, meaningful, and consistent disclosure of rental-purchase terms so that consumers will be able to more readily compare the available rental-purchase terms and avoid uninformed use of rental-purchase transactions, and to protect consumers against unfair rental-purchase practices.

SEC. 3. CONSUMER CREDIT PROTECTION ACT.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

''TITLE X—RENTAL-PURCHASE TRANSACTIONS

''SEC. 1001. SHORT TITLE; DEFINITIONS.

''(a) SHORT TITLE.—This title may be cited as the 'Rental-Purchase Protections Act'.

''(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

''(1) ADVERTISEMENT.—The term 'advertisement' means a commercial message in any medium that promotes, directly or indirectly, a rental-purchase agreement, but does not include price tags, window signs, or other in-store merchandising aids.

''(2) AGRICULTURAL PURPOSE.—The term 'agricultural purpose' includes—

''(A) the production, harvest, exhibition, marketing, transformation, processing, or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

''(B) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

''(3) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(4) CASH PRICE.—The term 'cash price' means the price at which a merchant, in the ordinary course of business, offers to sell for cash the property that is the subject of the rental-purchase transaction.

''(5) CONSUMER.—The term 'consumer' means a natural person who is offered or enters into a rental-purchase agreement.

''(6) DATE OF CONSUMMATION.—The term 'date of consummation' means the date on which a consumer becomes contractually obligated under a rental-purchase agreement.

''(7) INITIAL PAYMENT.—The term 'initial payment' means the amount to be paid before or at the time of consummation of the agreement, or the time of delivery of the property covered by the agreement if delivery occurs after consummation, including—

''(A) the rental payment;

''(B) service, processing, or administrative charges;

''(C) any delivery fee;

''(D) refundable security deposit;

''(E) taxes;

''(F) mandatory fees or charges; and

''(G) any optional fees or charges agreed to by the consumer.

''(8) MERCHANT.—The term 'merchant' means a person who provides the use of property through a rental-purchase agreement in the ordinary course of business and to whom the initial payment by the consumer under the agreement is payable.

''(9) PAYMENT SCHEDULE.—The term 'payment schedule' means the amount and timing of the periodic payments and the total number of all periodic payments that the consumer will make if the consumer acquires ownership of the property by making all periodic payments.

''(10) PERIODIC PAYMENT.—The term 'periodic payment' means the total payment that a consumer will make for a specific rental period after the initial payment, including the rental payment, taxes, mandatory fees or charges, and any optional fees or charges agreed to by the consumer.

''(11) PROPERTY.—The term 'property' means property that is not real property under the laws of the State in which the property is located when it is made available under a rental-purchase agreement.

''(12) RENTAL PAYMENT.—The term 'rental payment' means rent required to be paid by a consumer for the possession and use of property for a specific rental period, but does not include taxes or any fees or charges.

''(13) RENTAL PERIOD.—The term 'rental period' means a week, month, or other specific period of time, during which the consumer has a right to possess and use property that is the subject of a rental-purchase agreement after paying the rental payment and any applicable taxes for such period.

''(14) RENTAL-PURCHASE AGREEMENT.—

''(A) IN GENERAL.—The term 'rental-purchase agreement' means a contract in the form of a bailment or lease for the use of property by a consumer for an initial period of 4 months or less, that is renewable with each payment by the consumer, and that permits but does not obligate the consumer to become the owner of the property.

''(B) EXCLUSIONS.—The term 'rental-purchase agreement' does not include—

''(i) a credit sale (as defined in section 103(g) of the Truth in Lending Act);

''(ii) a consumer lease (as defined in section 181(1) of the Truth in Lending Act); or

''(iii) a transaction giving rise to a debt incurred in connection with the business of lending money or a thing of value.

''(15) RENTAL-PURCHASE COST.—

''(A) IN GENERAL.—For purposes of sections 1010 and 1011, the term 'rental-purchase cost' means the sum of all rental payments and mandatory fees or charges imposed by the merchant as a condition of entering into a rental-purchase agreement or acquiring ownership of property under a rental-purchase agreement, including—

''(i) any service, processing, or administrative charge;

''(ii) any fee for an investigation or credit report; and

''(iii) any charge for delivery required by the merchant.

''(B) EXCLUDED ITEMS.—The following fees or charges shall not be taken into account in determining the rental-purchase cost with respect to a rental-purchase transaction:

''(i) Fees and charges prescribed by law, which actually are or will be paid to public officials or government entities, such as sales tax.

''(ii) Fees and charges for optional products and services offered in connection with a rental-purchase agreement.

''(16) STATE.—The term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

''(17) TOTAL COST.—The term 'total cost' means the sum of the initial payment and all periodic payments in the payment schedule to be paid by the consumer to acquire ownership of the property that is the subject of the rental-purchase agreement.

''SEC. 1002. EXEMPTED TRANSACTIONS.

''This title does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with agencies or instrumentalities of the Federal Government or a State or political subdivision thereof.

''SEC. 1003. GENERAL DISCLOSURE REQUIREMENTS.

''(a) RECIPIENT OF DISCLOSURE.—A merchant shall disclose to any person who will be a signatory to a rental-purchase agreement the information required by sections 1004 and 1005.

''(b) TIMING OF DISCLOSURE.—The disclosures required under sections 1004 and 1005 shall be made before the consummation of the rental-purchase agreement, and clearly and conspicuously in writing as part of the rental-purchase agreement to be signed by the consumer.

''(c) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term 'clearly and conspicuously' means that information required to be disclosed to the consumer shall be worded plainly and simply, and appear in a type size, prominence, and location as to be readily noticeable, readable, and comprehensible to an ordinary consumer.

''SEC. 1004. RENTAL-PURCHASE DISCLOSURES.

''(a) IN GENERAL.—For each rental-purchase agreement, the merchant shall disclose to the consumer, to the extent applicable—

''(1) the date of the consummation of the rental-purchase transaction and the identities of the merchant and the consumer;

''(2) a brief description of the rental property, which shall be sufficient to identify the property to the consumer, including an identification or serial number, if applicable, and a statement indicating whether the property is new or used;

''(3) a description of any fee, charge, or penalty, in addition to the periodic payment, that the consumer may be required to pay under the agreement, which shall be separately identified by type and amount;

''(4) a clear and conspicuous statement that the transaction is a rental-purchase agreement and that the consumer will not obtain ownership of the property until the consumer has paid the total dollar amount necessary to acquire ownership;

''(5) the amount of any initial payment, which includes the first periodic payment, and the total amount of any fees, taxes, or other charges, required to be paid by the consumer;

''(6) the amount of the cash price of the property that is the subject of the rental-purchase agreement, and, if the agreement involves the rental of 2 or more items as a set (as may be defined by the Board in regulation) a statement of the aggregate cash price of all items shall satisfy this requirement;

''(7) the amount and timing of periodic payments, and the total number of periodic payments necessary to acquire ownership of the property under the rental-purchase agreement;

''(8) the total cost, using that term, and a brief description, such as 'This is the amount that you will pay the merchant if you make all periodic payments to acquire ownership of the property.';

''(9) a statement of the right of the consumer to terminate the agreement without paying any fee or charge not previously due under the agreement by voluntarily surrendering or returning the property in good repair upon expiration of any lease term; and

''(10) substantially the following statement: '**OTHER IMPORTANT TERMS**: See your rental-purchase agreement for additional important information on early termination procedures, purchase option rights, responsibilities for loss, damage, or destruction of the property, warranties, maintenance responsibilities, and other charges or penalties you may incur.'.

''(b) FORM OF DISCLOSURE.—The disclosures required by paragraphs (4) through (10) of subsection (a) shall—

''(1) be segregated from other information at the beginning of the rental-purchase agreement;

''(2) contain only directly related information; and

''(3) be identified in boldface, upper-case letters as follows: '**IMPORTANT RENTAL-PURCHASE DISCLOSURES**'.

''(c) DISCLOSURE REQUIREMENTS RELATING TO INSURANCE PREMIUMS AND LIABILITY WAIVERS.—

''(1) IN GENERAL.—A merchant shall clearly and conspicuously disclose in writing to the consumer before the consummation of a rental-purchase agreement that the purchase of leased property insurance or liability waiver coverage is not required as a condition for entering into the rental-purchase agreement.

''(2) AFFIRMATIVE WRITTEN REQUEST AFTER COST DISCLOSURE.—A merchant may provide insurance or liability waiver coverage, directly or indirectly, in connection with a rental-purchase transaction only if—

''(A) the merchant clearly and conspicuously discloses to the consumer the cost of each component of such coverage before the consummation of the rental-purchase agreement; and

''(B) the consumer signs an affirmative written request for such coverage after receiving the disclosures required under paragraph (1) and subparagraph (A) of this paragraph.

''(d) ACCURACY OF DISCLOSURE.—

''(1) IN GENERAL.—The disclosures required to be made under subsection (a) shall be accurate as of the date on which the disclosures are made, based on the information available to the merchant.

''(2) INFORMATION SUBSEQUENTLY RENDERED INACCURATE.—If information required to be disclosed under subsection (a) is subsequently rendered inaccurate as a result of any agreement between the merchant and the consumer subsequent to the delivery of the required disclosures, the resulting inaccuracy shall not constitute a violation of this title.

''SEC. 1005. OTHER AGREEMENT PROVISIONS.

''(a) IN GENERAL.—Each rental-purchase agreement shall—

''(1) provide a statement specifying whether the merchant or the consumer is responsible for loss, theft, damage, or destruction of the property;

''(2) provide a statement specifying whether the merchant or the consumer is responsible for maintaining or servicing the property, together with a brief description of the responsibility;

''(3) provide that the consumer may terminate the agreement without paying any charges not previously due under the agreement by voluntarily surrendering or returning the property that is the subject of the agreement upon expiration of any rental period;

''(4) contain a provision for reinstatement of the agreement, which at a minimum—

''(A) permits a consumer who fails to make a timely rental payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental payments and any other charges then due under the agreement and a payment for the next rental period within 7 business days after failing to make a timely rental payment if the consumer pays monthly, or within 3 business days after failing to make a timely rental payment if the consumer pays more frequently than monthly;

''(B) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits

the consumer to reinstate the agreement during a period of at least 60 days after the date of the return or surrender of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period;

''(C) if the consumer has paid 50 percent or more of the total cost necessary to acquire ownership and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 120 days after the date of the return of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period; and

''(D) permits the consumer, upon reinstatement of the agreement, to receive the same property, if available, that was the subject of the rental-purchase agreement, or if the same property is not available, a substitute item of comparable quality and condition, except that the Board may, by regulation or order, exempt any independent small business (as defined by regulation of the Board) from the requirement of providing the same or comparable product during the extended reinstatement period provided in subparagraph (C), if the Board determines, taking into account such standards as the Board determines appropriate, that the reinstatement right provided in subparagraph (C) would provide excessive hardship for the independent small business;

''(5) provide a statement specifying the terms under which the consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement either by payment of the total cost to acquire ownership, as provided in section 1006, or by exercise of any early purchase option provided in the rental-purchase agreement;

''(6) provide a statement disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty; and

''(7) provide, to the extent applicable, a description of any grace period for making any periodic payment, the amount of any security deposit, if any, to be paid by the consumer upon initiation of the rental-purchase agreement, and the terms for refund of such security deposit to the consumer upon return, surrender or purchase of the property.

''(b) REPOSSESSION DURING REINSTATEMENT PERIOD.—Subsection (a)(4) shall not be construed so as to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to subsection (a)(4)(A), but such a repossession does not affect the right of the consumer to reinstatement under subsection (a)(4).

''SEC. 1006. RIGHT TO ACQUIRE OWNERSHIP.

''(a) IN GENERAL.—The consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement, and the rental-purchase agreement shall terminate, upon compliance by the consumer with the requirements of subsection (b) or any early payment option provided in the rental purchase agreement, and upon payment of any past due payments and fees, as permitted by regulation of the Board.

''(b) PAYMENT OF TOTAL COST.—The consumer shall acquire ownership of the rental property upon payment of the total cost of the rental-purchase agreement, as defined in section 1001(17), and as disclosed to the consumer in the rental-purchase agreement pursuant to section 1004(a).

''(c) ADDITIONAL FEES PROHIBITED.—A merchant shall not require the consumer to pay, as a condition for acquiring ownership of the property that is the subject of the rental-purchase agreement, any fee or charge in addition to, or in excess of, the regular periodic payments required by subsection (b), or any early purchase option amount provided in the rental-purchase agreement, as applicable. A requirement that the consumer pay an unpaid late charge or other fee or charge which the merchant has previously billed to the consumer shall not constitute an additional fee or charge for purposes of this subsection.

''(d) TRANSFER OF OWNERSHIP RIGHTS.—Upon payment by the consumer of all payments necessary to acquire ownership under subsection (b) or any early purchase option amount provided in the rental-purchase agreement, as applicable, the merchant shall—

''(1) deliver, or mail to the last known address of the consumer, such documents or other instruments which the Board has determined, by regulation, are necessary to acknowledge full ownership by the consumer of the property acquired pursuant to the rental-purchase agreement; and

''(2) transfer to the consumer the unexpired portion of any warranties provided by the manufacturer, distributor, or seller of the property, which shall apply as if the consumer were the original purchaser of the property, except where such transfer is prohibited by the terms of the warranty.

''SEC. 1007. PROHIBITED PROVISIONS.

''A rental-purchase agreement may not contain—

''(1) a confession of judgment;

''(2) a negotiable instrument;

''(3) a security interest or any other claim of a property interest in any goods, except those goods, the use of which is provided by the merchant pursuant to the agreement;

''(4) a wage assignment;

''(5) a provision requiring the waiver of any legal claim or remedy created by this title or other provision of Federal or State law;

''(6) a provision requiring the consumer, in the event that the property subject to the rental-purchase agreement is lost, stolen, damaged, or destroyed, to pay an amount in excess of the least of—

''(A) the fair market value of the property, as determined by regulation of the Board;

''(B) any early purchase option amount provided in the rental-purchase agreement; or

''(C) the actual cost of repair, as appropriate;

''(7) a provision authorizing the merchant, or a person acting on behalf of the merchant, to enter the dwelling of the consumer or other premises without obtaining the consent of the consumer, or to commit any breach of the peace in connection with the repossession of the rental property or the collection of any obligation or alleged obligation of the consumer arising out of the rental-purchase agreement;

''(8) a provision requiring the purchase of insurance or liability damage waiver to cover the property that is the subject of the rental-purchase agreement, except as permitted by regulation of the Board; or

''(9) a provision requiring the consumer to pay more than 1 late fee or charge for an unpaid or delinquent periodic payment, regardless of the period in which the payment remains unpaid or delinquent, or to pay a late fee or charge for any periodic payment because a previously assessed late fee has not been paid in full.

''SEC. 1008. STATEMENT OF ACCOUNTS.

''Upon request of a consumer, a merchant shall provide a statement of the account of the consumer. If a consumer requests a statement for an individual account more than 4 times in any 12-month period, the merchant may charge a reasonable fee for the additional statements requested in excess of 4 times during that 12-month period.

''SEC. 1009. RENEGOTIATIONS AND EXTENSIONS.

''(a) RENEGOTIATIONS.—For purposes of this section, a 'renegotiation' occurs when a rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation requires new disclosures under this title, except as provided in subsection (c).

''(b) EXTENSIONS.—For purposes of this section, an 'extension' is an agreement by the consumer and the merchant to continue an existing rental-purchase agreement beyond the original end of the payment schedule, but does not include a continuation that is the result of a renegotiation.

''(c) EXCEPTIONS.—New disclosures under this title are not required for the following, even if they meet the definition of a renegotiation or an extension under this section:

''(1) A reduction in payments.

''(2) A deferment of 1 or more payments.

''(3) The extension of a rental-purchase agreement.

''(4) The substitution of property with property that has a substantially equivalent or greater economic value, provided that the rental-purchase cost does not increase.

''(5) The deletion of property in a multiple-item agreement.

''(6) A change in the rental period, provided that the rental-purchase cost does not increase.

''(7) An agreement resulting from a court proceeding.

''(8) Any other event described in regulations prescribed by the Board.

''SEC. 1010. POINT-OF-RENTAL DISCLOSURES.

''(a) IN GENERAL.—For any item of property or set of items displayed or offered for rental-purchase, the merchant shall display on or next to the item or set of items a card, tag, or label that clearly and conspicuously discloses—

''(1) a brief description of the property;

''(2) whether the property is new or used;

''(3) the cash price of the property;

''(4) the amount of each rental payment;

''(5) the total number of rental payments necessary to acquire ownership of the property; and

''(6) the rental-purchase cost.

''(b) FORM OF DISCLOSURE.—

''(1) IN GENERAL.—A merchant may make the disclosures required by subsection (a) in the form of a list or catalog which is readily available to the consumer at the point of rental if the merchandise is not displayed in the showroom of the merchant, or if displaying a card, tag, or label would be impractical due to the size of the merchandise.

''(2) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term 'clearly and conspicuously' means that information required to be disclosed to the consumer shall appear in a type size, prominence, and location as to be noticeable, readable, and comprehensible to an ordinary consumer.

''SEC. 1011. RENTAL-PURCHASE ADVERTISING.

''(a) IN GENERAL.—If an advertisement for a rental-purchase transaction refers to or states the amount of any payment for any specific item or set of items, the merchant making the advertisement shall also clearly and conspicuously state in the advertisement for the item or set of items advertised—

''(1) that the transaction advertised is a rental-purchase agreement;

''(2) the amount, timing, and total number of rental payments necessary to acquire ownership under the rental-purchase agreement;

''(3) the amount of the rental-purchase cost;

''(4) that to acquire ownership of the property, the consumer must pay the rental-purchase cost plus applicable taxes; and

''(5) whether the stated payment amount and advertised rental-purchase cost is for new or used property.

''(b) PROHIBITION.—An advertisement for a rental-purchase agreement shall not state or imply that a specific item or set of items is available at specific amounts or terms, unless the merchant usually and customarily offers, or will offer, the item or set of items at the stated amounts or terms.

''(c) CLEARLY AND CONSPICUOUSLY.—

''(1) IN GENERAL.—For purposes of this section, the term 'clearly and conspicuously' means that required disclosures shall be presented in a type, size, shade, contrast, prominence, location, and manner, as applicable to different media for advertising, so as to be readily noticeable and comprehensible to the ordinary consumer.

''(2) REGULATORY GUIDANCE.—The Board shall prescribe regulations on principles and factors to meet the clear and conspicuous standard, as appropriate to print, video, audio, and computerized advertising, reflecting the principles and factors typically applied in each medium by the Federal Trade Commission.

''(3) LIMITATION.—Nothing contrary to, inconsistent with, or in mitigation of, the disclosures required by this section shall be used in any advertisement in any medium, and no audio, video, or print technique shall be used that is likely to obscure or detract significantly from the communication of the required disclosures.

''SEC. 1012. CIVIL LIABILITY.

''(a) IN GENERAL.—Except as otherwise provided in section 1013, any merchant who fails to comply with any requirement of this title with respect to any consumer is liable to such consumer as provided for leases in section 130. For purposes of this section, the term 'creditor' as used in section 130 shall include a 'merchant', as defined in section 1001.

''(b) JURISDICTION OF COURTS; LIMITATION ON ACTIONS.—

''(1) IN GENERAL.—Notwithstanding section 130(e), any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date on which the last payment was made by the consumer under the rental-purchase agreement.

''(2) RECOUPMENT OR SET-OFF.—This subsection shall not bar a consumer from asserting a violation of this title in an action to collect an obligation arising from a rental-purchase agreement, which was brought after the end of the 1-year period described in paragraph (1) as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

''SEC. 1013. ADDITIONAL GROUNDS FOR CIVIL LIABILITY.

''(a) INDIVIDUAL CASES WITH ACTUAL DAMAGES.—Any merchant who fails to comply with any requirement imposed under section 1010 or 1011 with respect to any consumer who suffers actual damage from the violation shall be liable to such consumer as provided in section 130.

''(b) PATTERN OR PRACTICE OF VIOLATIONS.—If a merchant engages in a pattern or practice of violating any requirement imposed under section 1010 or 1011, the Federal Trade Commission or an appropriate State attorney general, in accordance with section 1016, may initiate an action to enforce sanctions against the merchant, including—

''(1) an order to cease and desist from such practices; and

''(2) a civil money penalty of such amount as the court may impose, based on such factors as the court may determine to be appropriate.

''SEC. 1014. LIABILITY OF ASSIGNEES.

''(a) ASSIGNEES INCLUDED.—For purposes of section 1013 and this section, the term 'merchant' includes an assignee of a merchant.

''(b) LIABILITIES OF ASSIGNEES.—

''(1) APPARENT VIOLATION.—An action under section 1012 or 1013 for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates.

''(2) APPARENT VIOLATION DEFINED.—For purposes of this subsection, a violation that is apparent on the face of a rental-purchase agreement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement.

''(3) INVOLUNTARY ASSIGNMENT.—An assignee has no liability under this section in a case in which the assignment is involuntary.

''(4) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting or altering the liability under section 1012 or 1013 of a merchant assigning a rental-purchase agreement.

''(b) PROOF OF DISCLOSURE.—In an action by or against an assignee, the consumer's written acknowledgment of receipt of a disclosure, made as part of the rental-purchase agreement, shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

''SEC. 1015. REGULATIONS.

''(a) IN GENERAL.—The Board shall prescribe regulations, as necessary to carry out this title, to prevent its circumvention, and to facilitate compliance with its requirements.

''(b) MODEL DISCLOSURE FORMS.—

''(1) BOARD AUTHORITY.—The Board may publish model disclosure forms and clauses for common rental-purchase agreements to facilitate compliance with the disclosure requirements of this title and to aid the consumer in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.

''(2) CONTENT.—In devising forms described in paragraph (1), the Board shall consider the use by merchants of data processing or similar automated equipment.

''(3) USE NOT MANDATORY.—Nothing in this title may be construed to require a merchant to use any model form or clause published by the Board under this section.

''(4) DETERMINATION OF COMPLIANCE.—A merchant shall be deemed to be in compliance with the requirement to provide disclosure under section 1003(a) if the merchant—

''(A) uses any appropriate model form or clause published by the Board under this section; or

''(B) uses any such model form or clause, and changes it by deleting any information which is not required by this title or rearranging the format, if in making such deletion or rearranging the format, the merchant does not affect the substance, clarity, or meaningful sequence of the disclosure.

''(c) EFFECTIVE DATE OF REGULATIONS.—

''(1) IN GENERAL.—Any regulation prescribed by the Board, or any amendment or interpretation thereof, shall not be effective before the October 1 that follows the date of publication of the regulation in final form by at least 6 months.

''(2) AUTHORITY TO MODIFY.—The Board may, at its discretion—

''(A) lengthen the period of time described in paragraph (1) to permit merchants to adjust to accommodate new requirements; or

''(B) shorten that period of time, if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

''(3) VOLUNTARY COMPLIANCE.—Notwithstanding paragraph (1) or (2), a merchant may comply with any newly prescribed disclosure requirement prior to its effective date.

''SEC. 1016. ENFORCEMENT.

''(a) FEDERAL ENFORCEMENT.—Compliance with this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements of this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional test under the Federal Trade Commission Act.

''(b) STATE ENFORCEMENT.—

''(1) IN GENERAL.—An action to enforce the requirements imposed by this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction.

''(2) PRIOR WRITTEN NOTICE.—

''(A) IN GENERAL.—The State attorney general shall provide prior written notice of any civil action described in paragraph (1) to the Federal Trade Commission, and shall provide the Commission with a copy of the complaint.

''(B) EMERGENCY ACTION.—If prior notice required by this paragraph is not feasible, the State attorney general shall provide notice to the Commission immediately upon instituting the action.

''(3) FTC INTERVENTION.—The Commission may—

''(A) intervene in an action described in paragraph (1);

''(B) upon intervening—

''(i) remove the action to the appropriate United States district court, if it was not originally brought there; and

''(ii) be heard on all matters arising in the action; and

''(C) file a petition for appeal.

''SEC. 1017. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION.

''Whoever willfully and knowingly gives false or inaccurate information, or fails to provide information which that person is required to disclose under the provisions of this title or any regulation issued under this title shall be subject to the penalty provisions as provided in section 112.

''SEC. 1018. RELATION TO OTHER LAWS.

''(a) RELATION TO STATE LAW.—

''(1) NO EFFECT ON CONSISTENT STATE LAWS.—Except as otherwise provided in subsection (b), this title does not annul, alter, or affect in any manner the meaning, scope, or applicability of the laws of any State relating to rental-purchase agreements, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

''(2) DETERMINATION OF INCONSISTENCY.—Upon its own motion or upon the request of an interested party, which is submitted in accordance with procedures prescribed by regulation of the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a term or provision of a State law is inconsistent with

a provision of this title, merchants located in that State shall not be required to comply with that term or provision, and shall incur no liability under the law of that State for failure to follow such term or provision, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

''(3) GREATER PROTECTION UNDER STATE LAW.—Except as provided in subsection (b), for purposes of this section, a term or provision of a State law is not inconsistent with the provisions of this title if the term or provision affords greater protection and benefit to the consumer than the protection and benefit provided under this title, as determined by the Board, on its own motion or upon the petition of any interested party.

''(b) STATE LAWS RELATING TO CHARACTERIZATION OF TRANSACTION.—Notwithstanding subsection (a), this title shall supersede any State law, to the extent that such law—

''(1) regulates a rental-purchase agreement as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, or that imputes to a rental-purchase agreement the creation of a debt or extension of credit; or

''(2) requires the disclosure of a percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

''(c) RELATION TO FEDERAL TRADE COMMISSION ACT.—No provision of this title shall be construed as limiting, superseding, or otherwise affecting the applicability of the Federal Trade Commission Act to any merchant or rental-purchase transaction.

''SEC. 1019. EFFECT ON GOVERNMENT AGENCIES.

''No civil liability or criminal penalty under this title may be imposed on the United States or any of its departments or agencies, any State or political subdivision thereof, or any agency of a State or political subdivision thereof.

''SEC. 1020. COMPLIANCE DATE.

''Compliance with this title shall not be required until 6 months after the date of enactment of this title. In any case, a merchant may comply with this title at any time after such date of enactment.''.

By Mr. KYL (for himself and Mr. CORNYN):

S. 887. A bill to amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgments, settlements, or agreements that operate as a tax; to the Committee on Finance.

Mr. KYL. Mr. President, I rise today to introduce the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003, ISCRAA. This legislation will restore to the States billions of dollars in revenue due to them from a massive lawsuit recently conducted on their behalf the tobacco-Related Medicaid expenses litigation. ISCRAA amends an existing provision of the Federal tax code in order to enforce basic, universally accepted fiduciary standards governing the award of attorneys fees. By applying these standards to the attorneys who represented the states in the tobacco settlement, ISCRAA reasonably can be expected to restore to the states income with a present value of approximately $9 billion. I have included at the end of my statement a chart detailing how much each state can expect to recover.

ISCRAA's tax formula is borrowed from the 1996 Tax Act's Intermediate Sanctions Tax, IST, which applies a two-step excise tax to any excessive or unreasonable compensation that the managers of a trust pay to themselves from the assets of the trust. The IST framework encourages the trustee to restore the excessive portion of any fee to the trust—when he does so, the IST's punitive taxes do not apply.

ISCRAA extends the IST to another type of trust relationship: that between a lawyer and his client. ISCRAA applies the IST tax formula to any unreasonable or excessive income that a lawyer collects from litigation resulting in a judgment or settlement in excess of $100 million. To avoid IST taxes, an attorney must restore the excessive portion of the fee to the client.

As my colleague Senator CORNYN will explain today, the ethical and legal abuses that resulted from the 1998 State tobacco settlement make the need for this legislation manifest. Senator CORNYN also will discuss the law of attorneys' fiduciary obligations, which establishes that a fee award is the property of the client—and that any unethical fee must be restored to the client, regardless of how the fee award is structured.

I will discuss today how ISCRAA will affect massive litigations generally. In order to gauge the reasonableness of a lawyer's fee award, ISCRAA adopts and codifies a liberal version of the lodestar-multiplier system. As I will later explain in greater detail, ISCRAA allows fee multipliers of up to 500 percent of reasonable hourly rates. This limit is as generous as the most liberal limits adopted by state courts, and considerably more generous than the limits that federal courts have applied in $100 million cases. ISCRAA's fee formula guarantees that attorneys' fiduciary obligations will be respected, while providing plaintiff's lawyers with ample incentive to provide high-quality legal representation in these types of cases.

Federal supervision of fee awards resulting from $100 million litigations is appropriate for several reasons. First, because of their sheer size, these types of lawsuits inevitably operate as a tax on the consuming public. Few defendants actually can afford to pay such judgments with cash on hand. Instead, the affected industries simply will raise the prices that they charge to their customers.

This is exactly what has happened in the State Medicaid tobacco settlement—according to the leading proponents of that litigation. The first State attorney general to file suit against the tobacco companies has admitted that ''what always happens in these cases is the industry passes the costs to the consumer.'' Other commentators agree that this has occurred in the tobacco litigation. As one law-review article notes, ''the [tobacco] settlement * * * is a tax because it's a set of payments made by tobacco companies that depend on how many packs they sell; in short, it looks like a tax and quacks like a tax.''

Because of the way that these massive judgments typically are satisfied, it is particularly important to ensure that attorneys are paid in proportion to the services that they provided—rather than solely on the basis of the size of the recovery. Again, the State tobacco settlement highlights the nature of the problem. As two of the leading academic commentators have noted, it is ''very troubl[ing]'' that under that agreement, ''a group of private citizens [are] getting paid a percentage of a tax increase they helped pass.'' The sheer size of the tobacco settlement—and the fact that attorneys fees were based on this size, rather than on the attorneys' actual efforts—has given the fee awards an uncanny resemblance to the medieval practice of tax farming. In all but name, the government has licensed a group of private individuals to collect a tax from the consuming public.

I would emphasize at this point that ISCRAA is not an attack on the State tobacco lawsuits. The bill does not pass judgment on the merits or the appropriateness of this type of litigation. ISCRAA simply is designed to ensure that when such lawsuits are brought on the public's behalf, the public receive its fair share of the proceeds. If a State chooses to seek compensatory revenue from industry for past harms, then the resulting tax on the public—minus the reasonable value of the legal services actually provided—must go to the State treasury.

There are several reasons why $100 million is an appropriate threshold for applying ISCRAA's fee formula. First, the courts themselves have indicated that fee agreements based primarily on the size of the recovery tend to become unreasonable when judgements reach this size. As one court has stated, ''in much smaller cases, a fee award of 33 percent does not present the danger of providing the plaintiff's counsel with the windfall that would accompany a 'megafund' settlement of $100 million or upwards. But it is quite different when the figures hit the really big time.'' Or as the Third Circuit notes, ''courts have generally decreased the percentage awarded [for attorneys fees] as the amount recovered increases, and $100 million seems to be the informal marker of a 'very large' settlement.''

The logic of avoiding judgment-based awards in these very large cases is straightforward. As one court explains, ''it is not 150 times more difficult to prepare, try, and settle a $150 million case than it is to try a $1 million case, but the application of a percentage comparable to that in a smaller case may yield an award 150 times greater.'' Thus, according to another court, ''there is considerable merit'' to disallowing standard percentage awards as the ''size of the [recovery] fund increases. In many instances the increase [in the recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel.''

It also bears mention that because of its $100 million threshold, ISCRAA applies to a fairly limited universe of cases. As courts have remarked, ''there are few so-called 'megafund' cases with settlements over $100 million.'' In 2001, the U.S. Court of Appeals for the Third Circuit attempted to catalogue all common-fund cases in federal court that resulted in recoveries greater than $100 million. Though such litigations have been more frequent in recent years, the Third Circuit identified only 22 such cases since 1985. See in re Cendant Corp. PRIDES Litig., 243 F.3d 722, 737 (3d Cir. 2001).

ISCRAA is somewhat broader than the criteria that Cendant Corp. employed to collect cases. ISCRAA is not limited to common-fund cases—it also applies to judgments won on behalf of tax-exempt entities or even single individuals. ISCRAA also applies to cases brought in State court, and it aggregates identical claims that are brought against common defendants in separate actions, in order to prevent evasion of its limits through the subdivision of actions. Nevertheless, ISCRAA's scope remains fairly narrow. An academic specialist who is familiar with developments in this field has reviewed the bill and concluded that because of its ''relatively high threshold,'' ISCRAA probably would apply only to about 15–20 litigations per year. I will include a copy of this professor's letter to me in the CONGRESSIONAL RECORD.

Finally, a $100 million threshold also is appropriate because it limits ISCRAA's reach to litigations that are a natural subject of congress's authority to regulate interstate commerce. It is well-established that ''Congress' commerce authority includes the power to regulate . . . those [economic] activities that substantially affect interstate commerce.'' United States v. Morrison, 529 U.S. 598, 609 (2000). See also *United States* v. *Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified $100 million as guideline for determining whether a matter has a significant impact on interState commerce. See, e.g. Executive Order 12866; Congressional Review Act, 5 U.S.C. §804(2); Unfunded Mandates Act, 2 U.S.C. §1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

Another point that I would like to emphasize today is that ISCRAA is not an anti-plaintiffs' lawyer bill. It is not stingy toward trial attorneys. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal State courts that engage in meaningful review of attorneys fees, and is considerably more generous than the Federal courts' practices in $100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee—even by trial lawyers' professional associations.

Federal courts primarily rely on two systems for calculating attorneys fees in cases, such as class actions, in which they are required to set ''reasonable fees:'' the percentage method and the lodestar-multiplier method. The percentage method, as its name implies, calculates fees as a percentage of the total recovery. The lodestar system, by contrast, requires a court to first calculate a fee based on the number of hours that the lawyer worked multiplied by prevailing hourly rates, the ''lodestar''. The court then multiplies this lodestar fee again in order to reward the attorney for the risk of nonpayment of fees that he assumed and for any exceptional services that he provided.

Over the last thirty years, courts have moved back and forth between these two systems. Only a few courts make lodestar-multipliers the exclusive means of awarding attorneys fees. But as one academic commentator has noted, ''lodestar, or hours-based methods, have been adopted in every [federal judicial] circuit.''

And more importantly, in large-recovery cases, there has been very little difference between lodestar and percentage systems. This is because even when courts apply a percentage to calculate fees, and as judgements become very large, courts typically also calculate a reasonable lodestar in order to determine what constitutes a reasonable percentage. Thus, again, as the Third Circuit notes, ''courts have generally decreased the percentage awarded as the amount recovered increases, and $100 million seems to be the informal marker of a 'very large' settlement.''

Courts have been wary of awarding fees based on percentages alone. As one State supreme court explains: ''to begin the assessment by arbitrarily picking a percentage amount without any reliance on a cognizable structure invites decisions that are nonobjective and inconsistent. What constitutes a reasonable percentage may differ from one judge to another depending on each judge's predilections, background, and geographical location in the state.''

Thus ''courts that employ the percentage approach appear to be motivated in part by a lodestar dynamic. Because courts are reluctant to give fee awards totally incommensurate with the efforts of the attorneys, percentage awards generally decrease as the amount of the recovery increases.''

One result of the cross-use of the lodestar and percentage systems is that even when courts use the percentage system, those awards overwhelmingly tend to reflect a reasonable lodestar multiplier. Therefore, even percentage-based cases tend to provide evidence of the range of multipliers that the courts consider to be reasonable.

In 2001, the Third Circuit ''set forth a chart of fee awards given in Federal courts since 1985 in class actions in which the settlement fund exceeded $100 million and in which the percentage of recovery method was used.'' Cendant Corp. The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and ''the lodestar multiplier in those cases never exceeded 2.99.'' And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.

Other courts, surveying smaller cases than the $100 million recoveries examined in Cendant Corp., have identified larger multipliers. One Federal district court has ''observe[d] that in virtually every case where the court notes a lodestar but awards fees based upon a percentage, the lodestar multiplier converted from this percentage is in the range of 1 to 4.'' Another Federal district court has found that ''the range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5.''

By contrast, some courts have declared that they would allow only lower multipliers. One Federal court has stated that ''only in the most exceptional circumstances would this court award a multiplier of 3 or greater. . . . this court believes that lodestars enhanced by multipliers less than 3 should adequately compensate even the most talented counsel.'' And the Seventh Circuit has suggested that ''it may be that a doubling of the lodestar would provide a sensible ceiling.''

On the other hand, the Florida Supreme Court—which is generally regarded as one of the more plaintiff-friendly courts in the United States—has announced that: ''we set the maximum multiplier available in this common-fund category of cases at 5. . . . [A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee that remains within the bounds of reasonableness. We emphasize that 5 is a maximum multiplier.''

ISCRAA adopts this more liberal standard. It allows fees as high as 500 percent of reasonable hourly rates. ISCRAA awards multipliers based on two criteria: it allows up to 300 percent to be added onto the amount of reasonable hourly fees if a case that involved a substantial risk of nonrecovery of fees, and allows an additional 100 percent add-on if the attorney provided exceptional services that improved the plaintiff's recovery.

The criteria that ISCRAA employs universally are recognized as necessary prerequisites to the legitimacy of a contingency fee. ''Courts in general have insisted that a contingent fee be

truly contingent. The typically elevated fee reflecting the risk to the lawyer of receiving no fee will be permitted only if the representation indeed involves a significant degree of risk.'' Charles W. Wolfram, Modern Legal Ethics § 9.4, at 532 (1986). The risk requirement has been recognized ever since contingency fees first were allowed in the United States. The American Bar Association even noted at that time that ''a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation.'' ABA Canons of Professional Ethics, Canon 13 (1908). Indeed, even the professional associations of plaintiffs' attorneys have, at times, acknowledged that contingent fees should be based on an actual contingency. In a guide to its members, the Association of Trial Lawyers of America has ''recommend[ed]'' that attorneys ''exercise sound judgment in using a percentage in the contingent fee contract that is commensurate with the risk, cost and effort required.'' ATLA, Keys to the Courthouse: Quick Facts on the Contingency Fee System 13 (1994).

The criteria that ISCRAA employs are universally accepted—and the limits that it sets should be universally acceptable. ISCRAA is not intended to alter the considered standards of any jurisdiction. Rather, it is intended to enforce those standards—and to correct the occasional extreme outlier. Because ISCRAA incorporates a fee formula that is substantially more liberal than the usual practices of the federal courts in $100 million cases, we can be confident that high-quality legal representation will remain available to plaintiffs in these large litigations. See, e.g. in re Sumitomo Copper Litig., 74 F. Supp. 2d 393, S.D.N.Y. 1999, RICO and Commodities Exchange Act case resulting in $116 million recovery; attorneys reviewed millions of pages of documents located throughout the world, many requiring translation from Japanese; Federal district court awards multiplier of 250 percent for total fee of $32 million.

Another issue that I will address today is the argument—occasionally raised in opposition to proposals to limit attorneys fees—that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that ''a fiduciary relationship exists as a matter of law between attorney and client.'' (Illinois Supreme Court.) As one academic commentator has noted: ''[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. . . . Lawyers are fiduciaries because retention of an attorney to exercise 'professional judgment' on the client's behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client's interests as the client would define them if the client were well-informed.''

The lawyer's status as fiduciary places limits on his dealings with his client—including with regard to his fee. ''An attorney's freedom to contract with a client is subject to the constraints of ethical considerations.'' New Jersey Supreme Court. ''In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.'' Massachusetts Appeals Court. ''As a result of lawyers' special role in the legal system, contracts between lawyer and client receive special scrutiny. . . . While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.'' Joseph M. Perillo, law professor.

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court: ''We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, a fee agreement between lawyer and client is not an ordinary business contract. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is a branch of the administration of justice and not a mere money getting trade.' ABA Canons of Professional Ethics, Canon 12.''

The same principle has been identified by the Florida Supreme Court: There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.''

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. ''[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an 'unreasonable' fee cannot be recovered, even if agreed to by the client.'' G. Hazard, Jr. & W. Hodes, The Law of Lawyering 1. 5:205 Fee Litigation and Arbitration 120 (1998 Supp.).

As one court has stated, ''[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true no matter what fee is specified in the contract, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, reasonableness is an implied term in every contract for attorney's fees.''

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. ''Fees must be reasonably proportional to the services rendered and the situation presented.'' (Arizona Supreme Court.) ''If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' . . . even though the client consented to such fee.'' West Virginia Supreme Court.

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust—and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

Another subject that I would like to address today is ISCRAA's effective date. ISCRAA applies to attorney fee payments received after June 1, 2002. This effective date is appropriate under the circumstances of the State tobacco settlement for several reasons: first, Congress routinely enacts major tax legislation with effective dates that look back much further than does ISCRAA. The Supreme Court has ''repeatedly upheld [such moderately] retroactive tax legislation against a due process challenge.'' United States v. Carlton, 512 U.S. 26, 30–31, 1994; see id. at 33, upholding tax whose ''actual retroactive effect . . . extended for a period only slightly greater than one year''.

Second, ISCRAA is not even truly retroactive. ISCRAA does not change the substantive law governing attorneys fee awards. Rather, it simply enforces established, pre-existing fiduciary standards that already bind every attorney in every state. The Model Rules of Professional Conduct, at Rule 1.5(a), contain a clear, direct command that ''a lawyer's fee shall be reasonable.'' Similarly, the Model Code of Professional Responsibility, at DR 2–106, directs that an attorney ''shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.'' The Model Code further explains that an attorneys fee is ''clearly excessive when, after a review of the facts, a

lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.'' Finally, as academic commentators point out, in addition to the model rules, ''all State rules of professional conduct prohibit attorneys from charging excessive fees.''

As I described earlier, to enforce fiduciary standards, ISCRAA codifies and applies a very generous version of the fee multiplier system, allowing attorneys fees as high as 500 percent of reasonable hourly rates. This is considerably more generous than what Federal courts typically allow in large-judgment cases. No attorney can be heard to complain that he is subjected to a law that is more generous than his existing fiduciary obligations.

Further, none of the tobacco-settlement attorneys can reasonably maintain that they have a vested right to see their fiduciary duties to the states go unenforced. Nevertheless, in order to be fair to all parties, ISCRAA's excise taxes are applied only to fees that were paid after June 1, 2002. By this date, all of the tobacco lawyers twice had received notice from George W. Bush that he intended to enact legislation to enforce their fiduciary obligations. In February 2000, then-candidate Bush promised that he would ''extend[] the 'excess benefits' provision of the tax code to private lawyers who contract with states and municipalities,'' with ''the reasonableness of the fees * * * [to] be determined by the standard judicial 'lodestar' method.'' And as early as February 2001, the current Administration announced that it anticipated providing ''additional public health resources for the States from the President's proposal to extend fiduciary responsibilities to the representatives of States in tobacco lawsuits.'' See A Blueprint for New Beginnings: A Responsible Budget for America's Priorities 80, Office of Management and Budget, February 28, 2001.

Under ISCRAA, all of the attorneys who participated in the State tobacco settlement still will be very liberally compensated. Because ISCRAA does not apply to the first three-and-a-half years of fee payments under the settlement, it exempts the first two-and-a-half billion dollars that these lawyers received. Every one of the tobacco lawyers will have more than enough money left to pay for the yachts, luxury cars, and vacation homes that were purchased with the tobacco proceeds. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

But most importantly, because ISCRAA applies to the last year's worth of tobacco fee payments, and to all future payments, it will return a substantial amount of funds to the States—money that already should belong to the States under any reasonable interpretation of fiduciary standards. It is critical that these funds be restored in this time of widespread fiscal crisis. Today a large number of the States face massive budget deficits that threaten their ability to provide health care to the indigent, to fully fund public education, and to guarantee adequate and effective law enforcement. When such needs risk going unmet, fee abuses that cost the States billions of dollars simply can no longer be ignored. The States must receive their fair share of the tobacco settlement proceeds—funds that are badly needed to support basic public services.

Under the terms of the November 1998 Master Settlement Agreement, MSA, between the States and tobacco companies, $500 million in cigarette taxes is set aside every year to pay the attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators—estimated to total $15 billion—the $500-million-a-year income stream, which is not adjusted for inflation, may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional $1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

The present value of the $500-million-a-year fee stream—discounting all future payments for the time value of money—has been conservatively estimated at just over $8 billion. Current and future payments from the $1.25 billion fee fund are less certain, since the grants made from that fund and their disbursement schedule have been kept obscure from the public. Because ISCRAA's effective date is June 1, 2002, ISCRAA will probably recoup for the States an additional $1 billion above the present value of future $500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees incurred in the litigation, ISCRAA would restore to the States virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the States can conservatively be estimated at $9 billion.

By restoring these excess fee payments to the states' MSA escrow account and returning them to the States on a per capita basis, ISCRAA guarantees every State a very substantial recovery. Based on the estimates that I have described, even our Nation's smallest State, Wyoming, would recoup at least $15 million in tobacco fee payments, and other small States, such as North Dakota, would receive approximately $20 million. On the other hand, our nation's largest State, California, can expect to recoup at least $1 billion. Other large States would also see generous returns: Florida, $511 million; Illinois, $397 million; Michigan, $318 million; New York, $607 million; Ohio, $363 million; and Texas, $667 million.

Here is how much each State can expect to recover:

Alabama	$142,220,272
Alaska	20,046,569
Arizona	164,079,935
Arkansas	85,496,543
California	1,083,230,642
Colorado	137,556,275
Connecticut	108,911,511
Delaware	25,059,883
District of Columbia	18,294,706
Florida	511,123,686
Georgia	261,806,474
Hawaii	38,745,502
Idaho	41,381,203
Illinois	397,174,614
Indiana	194,456,664
Iowa	93,585,167
Kansas	85,976,825
Kentucky	129,257,603
Louisiana	142,919,876
Maine	40,772,615
Maryland	169,384,021
Massachusetts	203,046,997
Michigan	317,835,940
Minnesota	157,327,166
Mississippi	90,973,451
Missouri	178,937,382
Montana	28,852,605
Nebraska	54,726,966
Nevada	63,905,164
New Hampshire	39,520,996
New Jersey	269,094,724
New Mexico	58,173,915
New York	606,875,689
North Carolina	257,420,675
North Dakota	20,537,847
Ohio	363,078,559
Oklahoma	110,353,478
Oregon	109,417,889
Pennsylvania	392,753,669
Rhode Island	33,525,716
South Carolina	128,305,961
South Dakota	24,140,253
Tennessee	181,945,847
Texas	666,850,647
Utah	71,417,756
Vermont	19,470,563
Virginia	226,374,115
Washington	188,496,659
West Virginia	57,831,660
Wisconsin	171,532,756
Wyoming	15,791,372

I ask unanimous consent that the text of the bill and the following four articles be printed in the RECORD.

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

S. 887

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 ''Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003'' (ISCRAA).

SEC. 2. EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

''SEC. 4959. TAXES ON EXCESS FEE TRANSACTIONS.

''(a) INITIAL TAXES.—There is hereby imposed on the collecting attorney in each excess fee transaction a tax equal to 5 percent of the excess fee. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY.—In any case in which a tax is imposed by subsection (a) on an excess fee transaction and the excess fee involved in such transaction is not corrected within the

taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee involved. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(c) EXCESS FEE TRANSACTION; EXCESS FEE.—For purposes of this section—

''(1) EXCESS FEE TRANSACTION.—

''(A) IN GENERAL.—The term 'excess fee transaction' means any transaction in which a fee is provided by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

''(B) DETERMINATION OF VALUE.—For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of—

''(i) the reasonable expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

''(ii) a reasonable fee based on—

''(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value to the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h)(2),

''(II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for the rendition of comparable services, including rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h)(2), and

''(III) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (II), an appropriate adjustment rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of substantial risk of non-payment of fees and for skillful or innovative services which increase the amount of the applicable plaintiff's recovery.

''(C) ADJUSTMENT RATE.—

''(i) IN GENERAL.—For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(ii)(II) which is added to the amount of such rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

''(ii) RISK PERCENTAGE.—For purposes of this subparagraph, the term 'risk percentage' means a percentage rate that is proportional to the collecting attorney's risk of nonrecovery of fees and which is—

''(I) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees, not more than 100 percent,

''(II) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 8,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 2 years to the case before resolution of all claims, not more than 200 percent, or

''(III) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 15,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 4 years to the case before resolution of all claims, not more than 300 percent.

''(iii) SKILL PERCENTAGE.—For purposes of this subparagraph, the term 'skill percentage' means, in the case of a collecting attorney who has demonstrated exceptionally skillful or innovative legal service which generated a recovery for the applicable plaintiff substantially greater than the typical recovery in similar cases, a percentage rate that is proportional to the increase in the applicable plaintiff's recovery and that is not more than 100 percent.

''(iv) LIMITATION.—An appropriate adjustment rate shall not increase the collecting attorney's fee above an amount that is proportional to the applicable plaintiff's recovery.

''(D) COURT APPROVAL OF FEES.—Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee—

''(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and

''(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in subsection (h).

''(2) EXCESS FEE.—The term 'excess fee' means the excess referred to in paragraph (1)(A).

''(d) JOINT AND SEVERAL LIABILITY.—For purposes of this section, if more than 1 person is liable for any tax imposed by subsection (a), all such persons shall be jointly and severally liable for such tax.

''(e) APPLICABLE PLAINTIFF.—For purposes of this section, the term 'applicable plaintiff' means any person represented by a collecting attorney with respect to a claim described in subsection (f)(1).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) COLLECTING ATTORNEY.—The term 'collecting attorney' means any person engaged in the practice of law who represents—

''(A) any governmental entity, including any State, municipality, or political subdivision of a State, or any person acting on such entity's behalf, including pursuant to Federal or State Qui Tam statutes, in a claim for recoupment of payments made or to be made by such entity to or on behalf of any natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

''(B) any organization described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), in a claim for damages based on a breach of duty, whether civil or criminal, causing damage to such organization,

''(C) any natural person seeking to recover damages in a claim based on breaches of duty, whether civil or criminal, causing damage to such natural person, or

''(D) any assignee or other holder of claims described in subparagraph (A), (B), or (C),

when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in settlements or judgments aggregating at least $100,000,000.

''(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess fee transaction, the period beginning with the date on which the transaction occurs and ending 90 days after the earliest of—

''(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

''(B) the date on which the tax imposed by subsection (a) is assessed.

''(3) CORRECTION.—

''(A) GENERAL RULE.—Any excess fee transaction is corrected by undoing the excess fee to the extent possible and taking any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would be if the collecting attorney were dealing under the highest fiduciary standards.

''(B) PAYMENT OF EXCESS FEES.—

''(i) IN GENERAL.—Except as provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

''(ii) CERTAIN SETTLEMENTS.—In the case of excess fees arising from or related to that certain Master Settlement Agreement of November 23, 1998, and other, concluded Settlement Agreements based on State health care expenditures pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including lawsuits involving the States of Florida, Minnesota, Mississippi, and Texas, the collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the 50 States in proportion to each State's share of the United States population.

''(C) NO WAIVER OF FEE.—No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of the excess fee or refusing to accept any portion of the excess fee.

''(g) DISCLOSURE REQUIREMENTS.—

''(1) TREATMENT AS EXCESS FEE.—Any fee provided after the date of the enactment of this subsection by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff shall be deemed to be an excess fee provided in an excess fee transaction unless the disclosure requirements described in paragraph (2) are met.

''(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney receives any fees with respect to a claim described in subsection (f)(1), if such collecting attorney—

''(A) includes in the return of tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

''(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff prior to the deadline (including extensions) for filing such return.

''(h) LEGAL AUDITING FIRM.—

''(1) IN GENERAL.—In any case before a Federal district court or a State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing attorney billings and select 1 such legal auditing firm to review the billing records submitted by the collecting attorney, under the same standards the firm would use if it were hired by a private party to review legal bills submitted to the party, for the reasonableness of such attorney's billing patterns and practices. The court shall require the collecting attorney to submit billing records, cost records, and any other information sought by such firm in its review.

''(2) REVIEW BY LEGAL AUDITING FIRM.—In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including—

''(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney,

''(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period,

''(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates,

''(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments,

''(E) whether particular tasks were staffed appropriately,

''(F) whether the costs and expenses submitted by the collecting attorney were reasonable,

''(G) whether the collecting attorney exercised billing judgment, and

''(H) any other matters normally addressed by the legal auditing firm when reviewing attorney billings for private clients.

''(3) FILING OF REPORT; RESPONSE; BURDEN OF PROOF.—The court shall set a date for the filing of the report of the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be presumed correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

''(4) FEE FOR LEGAL AUDITING FIRM.—The fee for the report of the legal auditing firm shall be paid from the collecting attorney's fee award, the applicable plaintiff's recovery, or both in a manner determined by the court.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting ''4959,'' after ''4958,''.

(2) Subsection (e) of section 6213 of such Code is amended by inserting ''4959 (relating to excess fee transactions),'' before ''4971''.

(3) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting ''4959,'' after ''4958,''.

(4) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

''Subchapter D—Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards.''.

(5) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following:

''SUBCHAPTER D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards.''.

(6) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

''Sec. 4959. Taxes on excess fee transactions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to excess fees paid on or after June 1, 2002.

SEC. 3. DECLARATORY JUDGMENTS RELATING TO EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL.—Subchapter B of chapter 76 of the Internal Revenue Code of 1986 (relating to judicial proceedings) is amended by redesignating section 7437 as section 7438 and by inserting after section 7436 the following new section:

''SEC. 7437. DECLARATORY JUDGMENTS RELATING TO TAX ON EXCESS FEE TRANSACTIONS.

''(a) IN GENERAL.—In a case of actual controversy involving—

''(1) a determination by the Secretary or the collecting attorney with respect to the imposition of the excise tax on excess fee transactions on such collecting attorney under section 4959, or

''(2) a failure by the Secretary or the collecting attorney to make such a determination,

upon the filing of an appropriate pleading by an applicable plaintiff, the Tax Court may make a declaration with respect to such determination or failure. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(b) DEFERENTIAL REVIEW.—If a collecting attorney's fee has been approved by a court in accordance with section 4959(c)(1)(D) or by the Secretary pursuant to section 4959, the Tax Court shall review the fee only for an abuse of discretion.

''(c) LEGAL AUDITING FIRM.—In any petition for a declaration referred to in subsection (a):

''(1) NO PREVIOUS REPORT.—If a report by a legal auditing firm that meets the requirements of section 4959(h) has not been previously produced and relied on by another court, the Tax Court shall hire such a legal auditing firm and rely on its report pursuant to the procedures in section 4959(h).

''(2) SECOND REPORT.—

''(A) IN GENERAL.—If a report by a legal auditing firm has been approved by a court in accordance with section 4959, the Tax Court shall hire a second legal auditing firm upon the request of the petitioner.

''(B) FEE FOR REPORT.—The Tax Court may direct the petitioner to pay the fee for any report of a legal auditing firm provided pursuant to subparagraph (A).

''(d) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this section by any person until 90 days after such person first notifies the Secretary of the excess fee transaction with respect to which the proceeding relates.

''(e) DEFINITIONS.—For purposes of this section, any term used in this section and also in section 4959 shall have the meaning given such term by section 4959.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7437 and by inserting the following new items:

''Sec. 7437. Declaratory judgments relating to tax on excess fee transactions.

''Sec. 7438. Cross references.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

[From the Connecticut Law Review, Summer, 2001]

A MOST DANGEROUS INDISCRETION: THE LEGAL, ECONOMIC, AND POLITICAL LEGACY OF THE GOVERNMENTS' TOBACCO LITIGATION

(By Margaret A. Little)

In 1997 and 1998, the tobacco companies settled with four states who were approaching trial under agreements valued at around $40 billion. This was followed in late 1998 by a Master Settlement Agreement (''MSA'') wherein forty-six states entered into a massive $206 billion settlement agreement with the tobacco companies. In addition, the tobacco companies agreed to contribute $1.5 billion to an anti-smoking ''education and advertising campaign'' and $250 million ''for a foundation dedicated to reducing teen smoking.'' These agreements which total $246 billion are reported to represent the largest privately negotiated redistribution of wealth in world history. MSA further obligates the tobacco companies to pay the private practice attorneys hired by the settling states what has been variously estimated at $8 to $10 billion in net present value. Each state's legislature must pass a ''Qualifying Statute'' to be eligible for the ''damage'' payments. The agreement could not be fully implemented until courts in eighty percent of the states ''in number and aggregate damages'' has approved the settlement. The most significant difference between the settlement with the states and the 1997 federal settlement is that the MSA confers no protections on the tobacco companies from suits by smokers.

[From the Economist, February 13, 1999]

KNIGHTS IN GOLDEN ARMOUR

For Americans, lawyers seem to embody extremes of both heroism and greed, sometimes at the same time. A film currently playing to packed cinemas across the country, ''A Civil Action'', tells the true story of one crusading lawyer (played by John Travolta) who bankrupted himself trying to sue two big companies which had polluted a small town's drinking water. But when they win, even lawyer-heroes expect to be well paid. The small group of contingency-fee lawyers who helped state governments bring the tobacco industry to heel are about to collect fees so colossal that they dwarf even the excesses of Wall Street investment bankers in the mad, bad 1980s.

Tobacco remains a bonanza for lawyers in all kinds of ways. On February 10th, a Californian jury awarded $51.5m in damages against Philip Morris to a woman with inoperable lung cancer. The award, by far the largest in a smoking-related lawsuit, was a brusque reminder that, despite last year's settlement with the states, tobacco companies remain vulnerable to suits brought by individuals; and that as long as smokers want compensation, lawyers will reap fortunes.

The legal profession is still trying to digest the implications of the staggering $8.1 billion a three-man arbitration panel awarded in December to lawyers for the work they did in helping Florida, Mississippi and Texas win a settlement from the tobacco industry for health-care costs. Over the next six months, the panel is expected to use the same criteria to set fees for the lawyers who represented dozens of other states in the negotiations which led to a national settlement last November. If they do, 250–450 lucky lawyers could collect between $20 billion and $25 billion in fees.

''These amounts are grotesque and absurd,'' says Lester Brickman, a law professor at New York's Cardozo School of Law. ''Most

of this money should have gone to the states.'' Mr Brickman, an expert on legal fees, predicts that the flood of cash going to a small group of trial lawyers will finance a wave of mass litigation against other industries, including alcohol and fast food, on similar public-health grounds. This approach is already being pursued by big-city mayors against gun manufacturers and distributors with the help of some of the same law firms which represented the states in their suits against the tobacco companies.

The lawyers involved in the tobacco suits insist that the awards are fair, reflecting the risk they ran by taking on the tobacco firms when no one, including the state attorneys-general, thought they had much chance of winning. The lawyers worked without pay, and as part of the settlement have now agreed to submit to arbitration rather than insist on a share of the money the states will receive, which is what the contracts they signed with many state governments would have given them. ''The fees are huge,'' admits Philip Anderson, the president of the American Bar Association. ''But these lawyers were able to do something that governments have never been able to achieve on their own—assemble enough evidence to bring the tobacco industry to account. And the fees were agreed by sophisticated parties on both sides.''

Too much sophistication, in fact, may be the problem. Unusually, neither plaintiffs nor defendants in these cases seem to have had much interest in limiting the lawyers' fees. Officially, these fees are being paid by the tobacco firms, which spares the state attorneys-general the politically embarrassing task of having to pay the lawyers huge amounts of money out of their state's share of the settlement. The lawyers agreed to arbitration because they knew that state politicians could never have honoured their contingency contracts, which would themselves have become the subject of prolonged litigation. Most judges would have reduced the amounts the lawyers would get.

In any case, the arbitration is a mere figleaf. The money going tot he lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not.

The reaction of the tobacco companies has also been suspiciously muted. Brown & Williamson, one of the firms, called the fee award ''obscene'', but the other companies said little. One reason may be that they do not really care about the size of the total fee award. Their deal with the states caps the amount they must pay all the states' lawyers of $500m a year. This will be divided by the lawyers according to their proportions of the overall fee award. Tobacco companies will also shell out another $1.25 billion over the next five years to pay off those lawyers who do not want to wait years to receive all their money. So the companies' exposure is limited, no matter what the lawyers get.

In effect, the lawyers are becoming joint business partners with the states and the tobacco companies in leaving a tax on smokers. The overall settlement has been widely misreported as giving the states $206 billion. But this is only the amount that they will receive in the first 25 years. The settlement actually runs in perpetuity, turning the tobacco firms into permanent tax-collection agencies for the states. The firms have already raised prices by about 50 cents a pack to pay for the settlement. The $500m they will be handing over to the lawyers annually will also be paid for by smokers.

If the total fee award to lawyers reaches $25 billion, these annual payments will continue for the next 50 years. If the outstanding fees are inflation-adjusted, as the arbitrators decided they should be in Florida, Mississippi and Texas, the payments to the lawyers and their heirs could go on for ever, because the $500m annual cap will not be inflation-adjusted. The tobacco firms are threatening to challenge the inflation-adjustment provision in the courts because they say it is not part of the national settlement agreement.

But inflation-adjusted or not, today's smokers—70% of whom earn less than $40,000 a year—will be paying the lawyers as well as the states, via the tobacco companies, for the rest of their (abbreviated) lives. Tobacco companies' bottom-lines will barely be affected. This is why tobacco shares rose after the settlement with the states was announced in November and barely reacted when the first gigantic fee awards to lawyers were made in December.

How the arbitrator came up with such a huge figure is something of a mystery. The awards range from 20–35% of what the three states will receive. But this is far more than the 8% fee agreed last May by the lawyers in Minnesota, the only state actually to take its tobacco case all the way to trial.

MORALES, FRIEND INDICTED IN TEXAS TOBACCO CASE—FORMER AG HAS DENIED WRONGDOING; FEDERAL CHARGES INCLUDE TAX EVASION

[From the Dallas Morning News, March 7, 2003]

(By George Kuempel)

AUSTIN.—Former Texas Attorney General Dan Morales and a lawyer friend were indicted on federal charges Thursday, accused of trying to defraud the state of hundreds of millions in legal fees from its suit against the tobacco industry.

Mr. Morales, a Democrat who lost a bid for governor last year, also was charged with illegally converting campaign funds to personal use, filing bogus income tax information and falsifying a bank loan application.

He and Marc Murr of Houston, who also was indicted, are expected to surrender to the FBI on Friday. They previously have denied wrongdoing.

U.S. Attorney Johnny Sutton called it ''a case of an elected official charged with abusing the public trust.''

''This indictment alleges he violated that trust by backdating contracts, forging government records and converting campaign contributions to personal use,'' Mr. Sutton said at the federal courthouse.

The 12-count indictment issued by a federal grand jury stemmed from a long-running investigation into payment of legal fees from the state's $17.3 billion settlement with tobacco companies when Mr. Morales was attorney general in 1998.

It's a case that has been at the center of a political wrangling for several years between Mr. Morales and Republicans. And it comes just weeks after his brother, San Antonio musician Michael Morales, pleaded guilty to attempting to extort $280,000 from Democrat Tony Sanchez during the campaign against Gov. Rick Perry.

Dan Morales, now a private lawyer in Austin, is accused of fraudulently trying to secure millions of dollars in fees for Mr. Murr for work on the tobacco case that he did not do by backdating contracts and forging government documents.

The indictments of Dan Morales and Marc Murr are another chapter in Texas' landmark $17.3 billion settlement with tobacco companies that has included twists, turns and reversals.

Initial debate: Gov. George W. Bush and state Attorney General John Cornyn, both Republicans, complained about $3.3 billion paid to five attorneys for their work on the 1998 settlement. Added intrigue: Mr. Morales said his friend Marc Murr of Houston was also among the state's tobacco lawyers and was due about $500 million. Mr. Morales had publicly hired the five private attorneys and disclosed their contracts; the deal with Mr. Murr was initially secret.

The Murr deal: Mr. Morales said Mr. Murr was hired to be a watchdog over the other lawyers and to advise him during the litigation. The other lawyers initially said that they had never heard of Mr. Murr, and later said he did little or no work on the case.

The initial inquiries: Mr. Cornyn, who succeeded Mr. Morales as attorney general in 1999, began investigating the Murr contract. Federal investigators started their inquiry into the deals and the documents.

The Murr money: In December 1998, Mr. Murr went before a national arbitration panel and was awarded $1 million over 30 years from tobacco companies. Unbeknownst to the other tobacco lawyers, Mr. Morales and Mr. Murr also formed a state arbitration panel in September 1998 that gave Mr. Murr $260 million—an award he contended was binding. He cited a Jan. 31, 1997, contract with the state as evidence.

Cornyn objects: In May 1999, Mr. Cornyn said that the Jan. 31, 1997, contract between Mr. Morales and Mr. Murr was a fake and did not exist when it supposedly was signed.

Sudden reversal: In U.S. District Court, Mr. Murr's attorney dropped the $260 million claim on May 6, 1999. Mr. Murr's attorney also told the court that at least one of the contracts signed by his client and Mr. Morales was backdated by as much as a year. Mr. Morales had denied any manipulation of the contract. He said the investigations are spawned by partisan political attacks.

Mr. Morales is reported to have hired Mr. Murr without the knowledge of the team of five high-profile trial lawyers he contracted to represent the state in its lawsuit against the big tobacco companies.

At one time, Mr. Murr stood to receive $520 million as his share of the $3.3 billion in fees awarded to the lawyers in the case.

His share was later reduced to $1 million, but he gave up his claim to the money when allegations arose that he had done no work on the case.

According to the indictment, Mr. Morales and Mr. Murr ''fabricated an outside counsel agreement, backdated to January 31, 1997, which purportedly required the State to pay a reasonable fee to Defendant Murr's corporation.''

As part of the ''scheme,'' the two men fabricated another outside counsel agreement, backdated to Oct. 17, 1996, which assigned 3 percent of the state's recovery to Mr. Murr's corporation.

''Defendant Morales directed a state employee to type and then backdate the bogus agreement. Three percent of the state's recovery was estimated to be $520 million,'' according to the indictment.

In May 1999, two forensic experts hired by The Dallas Morning News said that the Morales-Murr contract shows evidence of ''severe document manipulation.''

The private lawyers who handled the tobacco case were John Quinn and John Eddie Williams of Houston, Walter Umphrey and Wayne Reaud of Beaumont, and Harold Nix of Daingerfield. They have defended their actions in the case.

Mr. Morales surprised some when he announced plans in 1995 to sue several big tobacco companies to help recover the state's cost of treating patients suffering from tobacco-related illnesses.

But questions were raised about the fees by Republicans, including John Cornyn, who became attorney general in 1999 after Mr. Morales decided not to run again.

Mr. Cornyn began a state investigation, and Andy Taylor, a former assistant attorney general who headed that said of Mr. Morales: ''He's toast.

''We looked at the computer hard drives and could tell to the second when the backdating on the contracts occurred.''

Mr. Taylor, a Houston lawyer, said prosecutors have informed him that he will be called as a witness in the case. He said delays in the indictment probably were because of the lack of a permanent U.S. attorney for months before Mr. Sutton's appointment and confirmation.

Mr. Morales had slammed the inquiry as politically motivated. ''There's not one shred of evidence or a single document to support these lurid accusations.'' he said in 1999.

Micheal Ramsey, an attorney for Mr. Murr, said Thursday of the charges, ''My initial take is that it's unfair.''

Both men are accused of conspiracy and mail fraud, which can carry a penalty of up to five years in prison and a $250,000 fine.

The indictment also charges that Mr. Morales used $400,000 in campaign donations to buy a $775,000 house in Travis County and he is accused of understating by $400,000 his liabilities in applying for a $600,000 loan in 1999.

Making a false application on a loan application is a charge punishable by up to 30 years in prison and a $1 million fine.

According to the indictments, Mr. Morales defrauded the state, the Texas Ethics Commission, his contributors and others from 1997 and 1999 by converting political donations to personal use.

He is charged in another court with making false statements on his 1998 federal income tax return.

The indictment alleges that in his joint return filed with his wife, Mr. Morales listed their taxable income as $39,734 when he knew full well that ''their joint taxable income was substantially in excess'' of that amount.

THE CHARGES

Charges against former Attorney General Dan Morales include accusations that he:

Fraudulently tried to funnel $260 million in legal fees from the state tobacco case to a friend, who also was indicted.

Illegally converted nearly $400,000 in campaign contributions to his personal use.

Made false statements to get a $600,000 mortgage for his Travis County house.

Filed a false tax return that understated his taxable income for 1998.

[From the Wall Street Journal, March 10, 2003]

FAUST IN TEXAS II

The indictment of former Texas Attorney General Dan Morales lifts the lid ever so slightly over one of the mysteriously ignored scandals of the 1990s. We mean the national tobacco settlement that turned into a $500 million-a-year tax for the benefit of private tort lawyers.

That's the amount the tobacco companies agreed to pay in ''fees'' to private attorneys appointed by the state politicos on contingency. Four years later, an itinerant panel of three ''arbitrators'' is still moving from state to state to decide how this revenue stream, roughly a present value of $8 billion, will be divvied up.

Texas was crucial to starting the landslide toward a national settlement, and Mr. Morales selected the five lawyers who handled the state's case and would eventually receive an astounding $3.3 billion in fees. How these five were picked, though no part of last week's indictment, is an untold story in itself. Houston lawyer Joe Jamail, who waved off a chance to participate, told a grand jury Mr. Morales had demanded a $1 million gratuity to be named to the case.

Never mind. A million bucks would soon appear a hilariously trivial sum compared to the monumental fees the tobacco lawyers would receive. Seeing the sums that were up for grabs after the settlement was reached, Mr. Morales produced out of the blue a friend, lawyer Marc Murr, whom he claimed was entitled to $520 million. Mr. Morales even turned up a document, never seen before, testifying to a fee agreement.

The five private lawyers were apoplectic, insisting Mr. Murr had done little work and implying the contract was a forgery. Mr. Morales quickly retreated. He did not seek a third term as attorney general.

The Murr episode had not been forgotten, however, and last week the U.S. Attorney's office in Austin brought charges against Mr. Morales for making false statements and concealing documents in an effort to enrich his friend. Mr. Murr was also indicted.

Hallelujah. We can only hope this proves a sideshow to the main event. Mr. Jamail's allegations about how Mr. Morales picked the other five attorneys reportedly have been seconded by two other witnesses before a grand jury. Virtually overlooked has been the role of lawyer Walter Umphrey, one of the biggest beneficiaries of the tobacco settlement, in naming the supposedly ''independent'' chairman of the national arbitration panel that is still awarding millions of dollars in fees.

A shameful episode, the tobacco settlement essentially enacted a national sales tax outside any legislature and awarded a big chunk of the proceeds to private campaign contributors of the attorneys general who brought the suit. So vast have been the rewards, in publicity and money, that the AGs have now turned themselves into full-time buccaneers-in-arms of the private tort bar, preying on one industry after another in search of more such triumphs.

Belated accountability is better than none. We just hope prosecutors and grand juries won't stop with the Murr case.

Mr. CORNYN. Mr. President, I am pleased to join my colleague, Senator KYL, to introduce today this landmark legislation to clean up our civil justice system. This legislation would enact a badly needed reform to the way in which attorneys are paid in some of the Nation's largest cases. It is designed to address some of the worst abuses of our civil justice system that I have witnessed in my nearly thirty years in the legal profession as a lawyer in private practice, as a state trial and appellate judge, and as state attorney general.

This legislation, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003, ISCRAA, will combat the gross abuse of attorney contingent fee agreements, abuses which we have been witnessing at an increasing rate in recent years. The legislation will enforce attorneys' fiduciary duties to their clients in a small but important category of cases—those resulting in judgments greater than $100 million.

Contingent fee agreements can have an important role to play in our civil justice system. Sometimes, when people are injured but cannot afford to hire lawyers out of their own pockets, attorneys will accept the case with the expectation that, if their clients prevail, the attorney will be paid for his or her services out of the judgment or settlement that the attorney is able to secure for the client. Such agreements between attorneys and their clients are called contingent fee agreements, because the attorney's fee is contingent on the client obtaining a money judgment or settlement. Contingent fee agreements, properly understood and utilized, reward attorneys for their work in obtaining monetary recovery for their clients, and the risk that they take that, despite their hard work and best efforts, they are unable to obtain any recovery for the client at all.

Contingent fees can thus help ensure that plaintiffs with legitimate claims have the opportunity to obtain justice from our courts through the assistance of counsel. But contingent fees also present serious ethical problems for our legal system—particularly in cases in which the dollar amounts at stake are extraordinary, and result in a contingent fee award that overwhelmingly exceeds the relatively light or even negligible effort and risk actually undertaken by the attorneys.

Under the time-tested traditions of our legal system, clients hire attorneys with the understanding and expectation that the attorney is ethically, legally, and morally obliged to represent their best interests, and that the attorney will use his or her legal skills in order to produce the best possible result—not for the attorney, but for the client.

Thus, as my colleague has noted, contingent fee agreements are no ordinary agreements between consumers and businesses. It is a bedrock principle and well-established tenet of our Anglo-American system of justice that attorneys are not ordinary businessmen who can engage in hard bargaining with their customers, as courts have made clear on countless occasions. Rather, attorneys are officers of the court who bear a fiduciary duty to their clients. As fiduciaries, attorneys occupy a position of trust in their dealings with their clients, a trust which attorneys may not lawfully abuse.

One obligation that flows from this status as a fiduciary is the attorney's obligation not to charge an unreasonable or excessive fee. This obligation is a fundamental part of an attorney's ethical duties, universally recognized in the ethics rules of all 50 States. Courts have made clear, time and time again, that every attorney fee contract automatically and necessarily includes the requirement that the fee be a reasonable one, a fundamental and basic duty of all attorneys, and one that no provision of such agreements may abrogate.

ISCRAA affirms and reinforces the longstanding substantive law of attorneys' fiduciary duties, by providing a special mechanism to enforce those duties in a particularly high risk category of cases—a category that the courts themselves have singled out as posing special risks of unethical, windfall fees. Courts have noted that allowing standard contingency fee agreements in cases involving judgments of

$100 million or more have a distinct tendency of grossly overcompensating attorneys for their actual services rendered.

ISCRAA prevents attorneys from evading their obligation to charge a reasonable fee in extraordinarily large recovery cases, by effectively limiting awards to a generous multiple of reasonable hourly fees. State courts, Federal courts, and even trial lawyers' themselves have all recognized that a reasonable fee must be proportional to the attorney's actual efforts. ISCRAA codifies and enforces this principle, while continuing to guarantee lawyers ample and generous compensation for their efforts—using fee multipliers that are as generous as the most liberal limits adopted by state courts, and which are considerably more generous than the limits set by federal courts in $100 million cases.

This legislation thus promises to clean up our civil justice system and to repudiate the grossest abuses of our legal system. Make no mistake: Although all attorneys are supposed to uphold a strict ethical code, under which they are strictly forbidden from charging their clients unreasonable or excessive attorney fees, the temptation to abuse contingent fee agreements is a strong one, and even more so when the dollar amounts are truly extraordinary—such as in the $100 million cases that would be covered by this legislation. And make no mistake: the victim of such attorney fee abuse, and the beneficiary of this legislation, is not the defendant who pays the judgment—after all, the defendant pays the same total amount whether the money goes to the attorney or to the client. Rather, the real victim of this abuse, and the real beneficiary of this legislation, is the injured client, whose money is being taken away from the lawyer through an abusive contingent fee arrangement.

As my colleague has also noted, ISCRAA is unquestionably an appropriate exercise of Congress's power to regulate and protect interstate commerce, considering the large size of the litigations to which it applies. $100 million is a standard threshold used by the federal government to determine whether an economic transaction significantly affects interstate commerce.

But the most important reason for federal intervention in this area I have not yet mentioned, and I would like to take a moment to discuss it here: the gross abuses that we have already witnessed in large litigation fee awards. Recent experience amply demonstrates that, if the Federal Government does not act to prevent unethical and grossly abusive fee awards in massive, nationwide lawsuits, no one will. Moreover, recent experience further demonstrates that unreasonable fee payments in such suits threaten not just the attorneys' fiduciary obligations; they also place at risk the integrity of our governmental institutions. The unwholesome incentives created by windfall, unethical fee awards in large-scale litigations have induced some public officials to abandon their civic obligations.

The textbook example of the types of abuses that make ISCRAA necessary is the attorney fee arrangement awarded in the State lawsuits to recover tobacco-related Medicaid expenses. Individual law firms that represented the States in that litigation have been given hundreds of millions and sometimes even billions of dollars in fees. To date, approximately $15 billion in fees has been awarded to the tobacco settlement lawyers, to be paid out in $500-million-a-year increments. Attorneys representing just three of the States—Mississippi, Texas, and Florida—were awarded $8.2 billion in fees. In many cases, such fees were paid to attorneys who filed duplicate, copycat lawsuits at a time when settlement negotiations had already begun and the risk that the states would not recover any money was negligible. Yet these lawyers nevertheless received massive contingency fees, for suits that involved no real contingency. And for most of the tobacco settlement lawyers, the size of the fee awards bears no reasonable relation to the actual effort expended or risk involved.

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation—including from plaintiff lawyers themselves. For example, Michael Ciresi, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that the Texas, Florida, and Mississippi lawyers' fee awards ''are far in excess of these lawyers' contribution to any of the state results.'' Similarly, former Food and Drug Administration Commissioner David Kessler, another leader in the fight against tobacco, has said that the states' private lawyers ''did a real service, but I think the fee is outrageous. All the legal fees are out control.'' Washington, D.C. lawyer and tobacco-industry opponent John Coale has denounced the fee awards as ''beyond human comprehension'' and stated that ''the work does not justify them.'' Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorney fees requested in the state tobacco settlement. The President of ATLA has noted: ''Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny, of the courts. ATLA generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars.''

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorney fees. Ultimately, Florida's private counsel was awarded a total of $3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff—and not the defendant.

Perhaps the best gloss on the tobacco fee awards is that provided by Professor Lester Brickman, a professor of law at Cardozo Law School and noted authority on legal ethics and attorney fees. Professor Brickman has stated:

''Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be 'clearly excessive.' Indeed, that standard has now been superseded in most States by an even more rigorous standard: fees have to be 'reasonable.' Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands—and even hundreds of thousands—of dollars an hour, reasonable? I think to ask the question is to answer it.''

The attorney fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement, MSA, that resolved 46 of the states' litigation. Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA. Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over $2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. Revealingly, the third arbitrator, a retired Federal judge appointed by President Carter, dissented from the key fee decisions.

As incredible as the MSA fee awards and the arbitration procedures may seem, even more dubious is the process by which many of the law firms that participated in this lucrative litigation were selected in the first place to represent the states.

In my home State of Texas, trial lawyers have accused the then-state attorney general of demanding $1 million in campaign contributions in exchange for their being hired to represent the state in the tobacco litigation. One prominent lawyer—a former president of the Texas Trial Lawyers Association—has since said that the attorney general's solicitation was so blatant that ''I knew th[at] instant . . . that I

could not be involved in the matter.'' He even later wondered if the meeting had been a ''sting operation.'' Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

This former Texas attorney general was recently indicted on Federal charges of attempting to fraudulently divert $260 million in tobacco-settlement legal fees to one of his personal friends. He had given a sworn affidavit that this lawyer had served as Texas' ''primary adviser'' in its tobacco lawsuit—despite the apparent fact that the lawyer had attended no court hearings, depositions, or strategy meetings, wrote no memos or legal briefs about the case, and apparently never even spoke to any of the other attorneys. The attorney general even went so far as to forge and fraudulently backdate documents in order to win his friend a share of the tobacco settlement fee.

As for the five law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits that were based on other lawyers' work—and yet, despite the minimal energy expended on those suits, were awarded $3.3 billion in attorney fees. This award amounts to compensation that, even assuming that the attorneys worked all day every day during the entire period of the litigation, remains well in excess of $100,000 an hour. As one newspaper editorial has noted, for the amount of money that these lawyers were awarded, Texas could hire 10,000 additional teachers or policemen for ten years. Instead, four of these firms gave the attorney general $150,000 in campaign contributions in recent years.

Texas' experience is not an isolated example. In other states as well, lawyers' participation in the tobacco litigation appears to have been the product of political favoritism—and to have resulted in unfathomable fees that bear no reasonable relation to the services provided. For example: New Jersey: The private in-state lawyers who represented this state in the tobacco litigation have admitted that they had no mass-tort litigation experience and played no role in the state settlement talks. They have also admitted that all the key work in the state's lawsuit was done by out-of-state firms—the in-state firms' principal work was drafting pro hac vice motions to have these outside lawyers admitted in New Jersey courts. Any work that the New Jersey lawyers did was submitted to the outside lawyers, who made all of the substantive arguments. Result: these in-state lawyers were awarded $350 million in the MSA fee arbitration. Connections: the New Jersey lawyers were an inside group of past presidents of the New Jersey trial lawyers' association. The State refused to even consider hiring a nonprofit firm to conduct the New Jersey lawsuit.

Pennsylvania: Settlement talks had already begun, the states' tobacco litigation was being resolved, and all of the legal theories already had been developed long before the Pennsylvania state suit was filed. Result: Pennsylvania's private lawyers were awarded $50 million in the MSA arbitration—equivalent to 1000 percent of a reasonable hourly rate. As one expert has noted, ''there's not $50 million of work in there.'' Connections: the two law firms that the state Attorney General selected to conduct the litigation were among his top campaign contributors. The firms were awarded no-bid contracts. As one Pennsylvania commentator has noted, ''obviously, it was a political kind of thing.''

Maryland: Billionaire tort lawyer Peter Angelos demanded a one billion dollar fee for his work on that State's case, even though, according to the State Senate President, the State legislature had retroactively ''changed centuries of precedent to ensure [Angelos] a win in the case.'' Angelos ultimately received an accelerated $150 million payment for this no-risk lawsuit.

Louisiana: The private law firms that represented the State in the tobacco litigation were awarded $575 million. The MSA arbitration panel actually increased this award on the ground that the State government—the lawyers' supposed client—was opposed to suing tobacco companies. The Louisiana fee award amounts to almost $7,000 an hour, based on the lawyers' estimate that they worked a total 85,000 hours. Moreover, this estimate is unverifiable, because the state's private lawyers kept no billing records—as the attorney general explained, ''I wasn't that big on hourly or written reports.'' The dissenting member of the arbitration panel simply noted that the Louisiana fee award ''shocks the conscience'' The single biggest beneficiary of this largesse—receiving $115 million in attorney fees—was a law firm based in Lake Charles, the hometown of the state's attorney general. This firm and the next largest fee recipient had donated over $42,000 to the attorney general's political campaigns. Together, all of the firms that represented Louisiana gave more than $100,000 to the attorney general in the years before they were selected to participate in the state's tobacco team.

Ohio: The lawyers representing this State received fees estimated to exceed $50,000 per hour, despite the fact that, according to independent observers, ''all of the legal issues were resolved long before these Ohio lawyers stepped up to the plate.'' The state's outside counsel had donated $26,000 in campaign contributions to the State attorney general prior to their appointment to the state's tobacco team. After the attorney general chose one private lawyer to serve as the state's ''lead special counsel,'' that lawyer hired one of the attorney general's top aides for an undisclosed sum in order to—in the lawyer's own words—''help me get acquainted with a technique called PowerPoint.'' When told that ''there were many people in Ohio capable of doing a PowerPoint presentation,'' the state's outside counsel responded that this particular attorney general's aide ''was the only one I knew of.''

Massachusetts: According to other tobacco plaintiffs' lawyers, Massachusetts's suit piggybacked on the work of other lawyers and was not pivotal to the outcome of the tobacco litigation. Result: $775 million was awarded to the Massachusetts lawyers in the MSA arbitration.

New York: When this State's then-attorney general hired private counsel to represent the State in its tobacco lawsuit, tobacco companies already had paid $15 billion to Florida and Mississippi for identical claims and a national settlement agreement already was under discussion. As one local anti-tobacco leader has noted, ''these were copycat lawsuits, there wasn't all that much work to do.'' The firms' primary job was to collect New York-specific data in order to calculate damages. Ultimately, the New York firms represented the State for just 13 months. And they received a fee award of $625 million. This amounts to at least $14,000 an hour, for a lawsuit that by all accounts involved no risk. The dissenting member of the arbitration panel has denounced the award as ''an astronomical sum unrelated to, the attorneys', efforts or achievements.'' The New York firms had contributed more than $250,000 to New York politicians and their campaign organizations in the years preceding their selection - and another $200,000 after the State settlement.

Wisconsin: The Wisconsin lawyers' tobacco litigation work has been described as chiefly consisting of media and public relations efforts on their own behalf. Their billing records included time spent selecting office space and buying furniture. One lawyer effectively billed $3,000 to the State for reading an article in a Madison newspaper. The lawyers also billed the State for limousine rides around the state, trips on private jets, and stays at luxury hotels. Result: $75 million was awarded to the Wisconsin lawyers. Based on the law firms' records of the total number of hours they devoted to the case—including work by paralegals—this fee amounts to $3,000 per hour.

Missouri: A State supreme court justice in Missouri resigned his post in order to join one of the private law firms expected to receive a portion of the MSA arbitrators' fee award. Ultimately, the firms representing the State spent just 5 months on the state's lawsuit. They received a fee award of $111 million. One State leader has described the award as ''the biggest rip-off in the 180-year history of the state.'' The law firms receiving these fees had donated more than $500,000 to State politicians and parties in the years leading up to their selection as the State's outside counsel.

These examples are too numerous to dismiss. In State after State, the temptations created by the massive, windfall fees awarded in the Medicaid tobacco settlement corrupted not only lawyers involved, but the government as well. The fee awards poisoned everything that they touched. No one who examines these events closely—who surveys the obscene fee awards, and the political cronyism that determined who benefited—can disagree that this must never be allowed to happen again.

As a final point, I would like to address a question that has been raised with regard to remedy. Some have argued that nothing can be done to correct the excesses of the tobacco settlement fee awards—even with regard to fees that are still being or have yet to be paid. On several occasions, State judges who were called upon to approve their State's tobacco settlement have also, on their own initiative, inquired into the apparent unreasonableness of the fees awarded. In each case, both the plaintiffs' lawyers—and in some cases, even State officials—have challenged the State courts' authority to act. They have argued that these courts lack jurisdiction to review a national settlement, and that excessive fees cannot be restored to the State. One state's attorney general implicated in these events has argued that it is a ''misconception'' that the tobacco settlement ''attorneys' fees are coming out of the public's pocket. That is not the case. They [sic] defendants have agreed to pay these fees.''

Because of the way that the MSA fee payments are structured, no lawyer's award comes out of any one particular, identifiable State's recovery. Instead, all of the lawyers are being paid from one of two separate accounts, each of which is funded by the tobacco companies.

It is a mistake, however, to contend that, because the MSA fee payments are made directly from defendants to plaintiffs' lawyers—without ever formally or actually passing through the plaintiffs' hands—they are immunized against ethical scrutiny or correction. It is well and long established in our law that fee awards originate as the property of the client regardless of how the fee agreements are structured. The courts have been very clear on this point. As they have stated: ''The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney.''

''[A]ttorneys' fee provisions exist for the benefit of parties and not the attorneys. . . . Several jurisdictions have noted that the real party in interest with regard to fees is the client and not the attorney.''

''A judgment for costs is a judgment in favor of the party, and not of his attorney, and the money represented by the costs is the property of the party.''

''[T]he award of attorney fees [is] made not to the attorneys but to the litigant who was personally liable to the attorneys. This is also the view in other states when the courts award attorney fees.''

''An award of attorney's fees belongs to the client and not the attorney.''

Indeed, an award of attorney fees is generally taxable as income to the client. In a recent case, the U.S. Court of Appeals for the Ninth Circuit noted that a plaintiff's obligation to compensate the law firm that represented him ''was satisfied by [the defendant]. The payment was therefore to [the client]. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed.'' The Ninth Circuit emphasized that the fact ''[t]hat [the client] never laid hands on the money paid to the lawyers does not obliterate their constructive receipt.'' In other words, the fee award belongs to the client, regardless of how the award is made.

The rule that fee awards belong to the client is strongly supported by important policy considerations. It is necessary because any other rule would be an invitation to collusion and self-dealing between plaintiffs' lawyers and defendants. Again, the courts have been very clear on this point. As the Third Circuit has noted: ''[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.''

The Second Circuit has made the same point, noting: ''Defendants, once the settlement amount has been agreed to, have little interest in how it is distributed and thus no incentive to oppose the [attorneys] fee. Indeed, the same dynamic creates incentives for collusion—the temptation for lawyers to agree to a less than optimal settlement in exchange for [generous fees].''

The Ninth Circuit has also addressed the question of ''whether a class member has standing to appeal class counsel's attorney fee and cost award when that award is payable by the defendant independently, and not out of the class settlement.'' The court concluded that ''[e]ven if class counsel's attorney fees are not to be paid from the class settlement . . . , the aggregate amount of the attorney fees and the class settlement payments may be viewed as ''a constructive common fund.'' The court reasoned that ''[i]f . . . class counsel agreed to accept excessive fees and costs to the detriment of class plaintiffs, then class counsel breached their fiduciary duty to the class. If that were the case, any excessive award could be considered property of the class plaintiffs, and any injury they suffered could be at least partially redressed by allocating to them a portion of that award.''

As several commentators have noted, the policy considerations underpinning the rule that fee awards belong to the client apply with full force to the State tobacco settlement. Indeed, that settlement could serve as a textbook example for why this rule exists. As Professor Brickman has noted: ''To the tobacco companies, dollars are dollars, whether paid to States or paid to lawyers. So the real amount on the bargaining table was not the $246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. . . . Stated simply, because dollars are fungible, the fees are coming out of the settlements.''

Even foreign commentators have noted that the State tobacco settlement's ''arbitration is a mere figleaf. The money going to the lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not.''

And this point has not been lost upon members of Congress. Representative CHRIS COX, R–CA, has testified on the matter: ''It is specious to argue that, billions of dollars, in fees are not being diverted out of funds available for public health and taxpayers. The tobacco industry is willing to pay a certain sum to get rid of these cases. That sum is the total cost of the payment to the plaintiffs and their lawyers. It is a matter of indifference to the industry how that sum is divided—75 percent for the plaintiffs and 25 percent for their lawyers, or vice versa. That means that every penny paid to the plaintiffs' lawyers—whether it is technically ''in'' the settlement or not—is money that the industry could have paid to the state or the private plaintiffs. Excessive attorneys' fees in this case will not be a victimless crime.''

These authorities and their reasoning should be more than sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defenders of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That fee comes out of all of the State's recoveries. All excessive or unreasonable fees should be restored to all 50 of the States.

Senator KYL has already presented estimates of the monetary recovery each State can expect if ISCRAA is enacted. I would simply point out here that, according to those estimates, Texas has been charged excessive and unreasonable attorney fees in the amount of $667 million, and therefore would recover those funds if this legislation is adopted.

ISCRAA's return of unethical tobacco-settlement fee awards to the

states is manifestly proper in light of the fact that all fee awards are the property of the client, and the attorney is entitled only to a reasonable fee. No attorney is above these ethical rules and obligations. They cannot be waived or ignored. And in light of our experience with the State tobacco settlement fee awards, and their effect on our public officials, these ethical duties must be carried out and enforced strictly and fully.

Our Federal and State courts generally do a good job of protecting consumers and enforcing the rights of all Americans. But there are problems in our courts that require attention and significant reform. Class action abuse not only threatens the integrity and the perception of rationality in our nation's courts, it also strongly hinders economic and job growth. Tort reform is badly needed to rescue many industries, especially our health care industry, from abuses of our legal system. The judicial confirmation process at the federal level has become bitter, severe and destructive, and that broken process poses a serious threat to judicial independence and the quality and efficiency of our courts. And abusive attorney fee arrangements make a mockery of our civil justice system, all while enriching a small band of unscrupulous litigators at the expense of the real victims, their clients.

To enforce the longstanding fiduciary duty of all attorneys to charge only a reasonable fee, in a class of cases that poses heightened risks of abuse and special significance to the national economy, I urge that this Senate consider expediently, and approve quickly, this important measure, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 118—SUPPORTING THE GOALS OF THE JAPANESE AMERICAN, GERMAN AMERICAN, AND ITALIAN AMERICAN COMMUNITIES IN RECOGNIZING A NATIONAL DAY OF REMEMBRANCE TO INCREASE PUBLIC AWARENESS OF THE EVENTS SURROUNDING THE RESTRICTION, EXCLUSION, AND INTERNMENT OF INDIVIDUALS AND FAMILIES DURING WORLD WAR II

Mrs. BOXER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 118

Whereas, on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, which authorized the exclusion of 120,000 Japanese Americans and legal resident aliens from the West coast of the United States and the internment of United States citizens and legal permanent residents of Japanese ancestry in internment camps during World War II;

Whereas the freedom of Italian Americans and German Americans was also restricted during World War II by measures that branded them as enemy aliens and included required identification cards, travel restrictions, seizure of personal property, and internment;

Whereas President Gerald Ford formally rescinded Executive Order 9066 on February 19, 1976, in his speech, ''An American Promise'';

Whereas Congress adopted legislation which was signed by President Jimmy Carter on July 31, 1980, which established the Commission on Wartime Relocation and Internment of Civilians (the ''Commission'') to investigate the claim that the incarceration of Japanese Americans and legal resident aliens during World War II was justified by military necessity;

Whereas the Commission held 20 days of hearings and heard from over 750 witnesses on this matter and published its findings in a report entitled ''Personal Justice Denied'';

Whereas the Commission concluded that the promulgation of Executive Order 9066 was not justified by military necessity and that the decision to issue the order was shaped by ''race prejudice, war hysteria, and a failure of political leadership'';

Whereas Congress enacted the Civil Liberties Act of 1988, in which it apologized on behalf of the Nation for ''fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry'';

Whereas President Ronald Reagan signed the Civil Liberties Act of 1988 into law on August 10, 1988, proclaiming that day to be a ''great day for America'';

Whereas the Civil Liberties Act of 1988 established the Civil Liberties Public Education Fund, the purpose of which is ''to sponsor research and public educational activities and to publish and distribute the hearings, findings, and recommendations of the Commission on Wartime Relocation and Internment of Civilians so that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood'';

Whereas Congress adopted the Wartime Violation of Italian Americans Civil Liberties Act, which was signed by President Bill Clinton on November 7, 2000, and which resulted in a report containing detailed information on the types of violations that occurred and lists of individuals of Italian ancestry that were arrested, detained, and interned;

Whereas the Japanese American community recognizes a National Day of Remembrance on February 19th of each year to educate the public about the lessons learned from the internment to ensure that such an event never happens again; and

Whereas the Day of Remembrance provides an opportunity for all people to reflect on the importance of justice and civil liberties during times of uncertainty and emergency: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historical significance of February 19, 1942, the date President Roosevelt signed Executive Order 9066, which restricted the freedom of Japanese Americans, German Americans, Italian Americans, and legal resident aliens through required identification cards, travel restrictions, seizure of personal property, and internment; and

(2) supports the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the restrictions endured by the people in those communities as a result of Executive Order 9066.

Mrs. BOXER. Mr. President, today I am submitting a resolution to support the goals of the Japanese American, German American and Italian American communities in recognizing a ''National Day of Remembrance.'' This resolution will increase public awareness of the events surrounding the restriction, exclusion and internment of individuals and families during World War II.

On February 11, 1942, President Franklin D. Roosevelt signed Executive Order 9066, which authorized the incarceration of over 120,000 Americans of Japanese, Italian and German ancestry. Not until 34 years later—on February 19, 1976—was E.O. 9066 formally rescinded by President Gerald Ford.

Since then, Congress and Presidents Carter, Reagan, and Clinton have recognized the ''fundamental violation of the basic civil liberties and constitutional rights'' of individuals detained and interned under E.O. 9066. The Commission on Wartime Relocation and Internment of Civilians established by Congress under President Carter concluded that the decision to issue E.O. 9066 was shaped by ''race prejudice, war hysteria, and a failure of political leadership.''

In the last half century, organizations, families and individuals all over the country have observed a day of remembrance on February 19 to educate others of the distinct experiences of Japanese, Italian, and German Americans during World War II. Congressional recognition of this ''National Day of Remembrance'' would assist in promoting dialogue and education of Americans on this very important event in our history.

We need to recognize and support the efforts to raise awareness of the experiences of interned Americans. I urge my colleagues to support this resolution.

SENATE RESOLUTION 119—EXPRESSING THE SENSE OF THE SENATE THAT THERE SHOULD BE PARITY AMONG THE COUNTRIES THAT ARE PARTIES TO THE NORTH AMERICAN FREE TRADE AGREEMENT WITH RESPECT TO THE PERSONAL EXEMPTION ALLOWANCE FOR MERCHANDISE PURCHASED ABROAD BY RETURNING RESIDENTS, AND FOR OTHER PURPOSES

Ms. COLLINS (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 119

Whereas the personal exemption allowance is a vital component of trade and tourism;

Whereas many border communities and retailers depend on customers from both sides of the border;

Whereas a United States citizen traveling to Canada or Mexico for less than 48 hours is exempt from paying duties on the equivalent of $200 worth of merchandise on return to the United States, and for trips over 48 hours United States citizens have an exemption of up to $800 worth of merchandise;