Fund, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida):

S. 2209. A bill to authorize water resources projects for Indian River Lagoon-South and Southern Golden Gates Estates, Collier County, in the State of Florida; to the Committee on Environment and Public Works.

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

S. 2210. A bill to restrict the use of abusive tax shelters and offshore tax havens to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER:

S. 2211. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to reauthorize and reform the Abandoned Mine Reclamation Program, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself, Mr. BAYH, Mrs. DOLE, and Mr. GRAHAM of South Carolina):

S. 2212. A bill to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries; to the Committee on Finance.

By Mr. ROCKEFELLER:

S. 2213. A bill to amend part A of title IV of the Social Security Act to require the Secretary of Health and Human Services to conduct research on indicators of child well-being; to the Committee on Finance.

By Mr. BURNS:

S. 2214. A bill to designate the facility of the United States Postal Service located at 3150 Great Northern Avenue in Missoula, Montana, as the ''Mike Mansfield post office''; to the Committee on Governmental Affairs.

By Mr. REED (for himself, Mr. DEWINE, Mrs. CLINTON, and Mr. SMITH):

S. 2215. A bill to amend the Higher Education Act of 1965 to provide funds for campus mental and behavioral health service centers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HOLLINGS (for himself, Ms. SNOWE, Mr. LAUTENBERG, Mr. CARPER, Mr. BIDEN, Mrs. BOXER, Mr. SCHUMER, Mr. KENNEDY, and Mr. BREAUX):

S. 2216. A bill to provide increased rail transportation security; to the Committee on Commerce, Science, and Transportation.

By Mr. FRIST:

S. 2217. A bill to improve the health of health disparity populations; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRAHAM of Florida (for himself, Ms. SNOWE, Mr. GREGG, Mr. DODD, Mr. JEFFORDS, Mr. BREAUX, Mr. FRIST, and Mr. ENZI):

S. Res. 320. A resolution designating the week of March 7 through March 13, 2004, as ''National Patient Safety Awareness Week''; considered and agreed to.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mrs. FEINSTEIN):

S. Res. 321. A resolution recognizing the loyal service and outstanding contributions of J. Robert Oppenheimer to the United States and calling on the Secretary of Energy to observe the 100th anniversary of Dr. Oppenheimer's birth with appropriate programs at the Department of Energy and the Los Alamos National Laboratory; to the Committee on Energy and Natural Resources.

ADDITIONAL COSPONSORS

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1703

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1703, a bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax for expenditures for the maintenance of railroad tracks of Class II and Class III railroads.

S. 1704

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 1704, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 1792

At the request of Mr. DOMENICI, the names of the Senator from Nevada (Mr. REID), the Senator from Idaho (Mr. CRAPO) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1802

At the request of Mr. ENZI, his name was added as a cosponsor of S. 1802, a bill to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians.

S. 1807

At the request of Mr. MCCAIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1807, a bill to require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and for other purposes.

S. 2011

At the request of Mr. HAGEL, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 2011, a bill to convert certain temporary Federal district judgeships to permanent judgeships, and for other purposes.

S. 2186

At the request of Mr. DORGAN, his name was added as a cosponsor of S. 2186, a bill to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958, through May 15, 2004, and for other purposes.

S.J. RES. 28

At the request of Mr. CAMPBELL, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S.J. Res. 28, a joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II.

S. CON. RES. 88

At the request of Mr. SARBANES, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. Con. Res. 88, a concurrent resolution expressing the sense of Congress that there should continue to be parity between the adjustments in the pay of members of the uniformed services and the adjustments in the pay of civilian employees of the United States.

AMENDMENT NO. 2775

At the request of Ms. LANDRIEU, the names of the Senator from South Dakota (Mr. DASCHLE), the Senator from Nevada (Mr. REID), the Senator from Florida (Mr. NELSON), the Senator from Hawaii (Mr. INOUYE), the Senator from New York (Mrs. CLINTON), the Senator from Washington (Mrs. MURRAY), the Senator from Maryland (Ms. MIKULSKI) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 2775 proposed to S. Con. Res. 95, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009.

AMENDMENT NO. 2793

At the request of Mr. DORGAN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of amendment No. 2793 proposed to S. Con. Res. 95, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009.

AMENDMENT NO. 2847

At the request of Mr. GRASSLEY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of amendment No. 2847 proposed to S. Con. Res. 95, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself and Mr. COLEMAN);

S. 2210. A bill to restrict the use of abusive tax shelters and offshore tax

havens to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, I would like to introduce today, with Senator NORM COLEMAN, a comprehensive tax reform bill called the Tax Shelter and Tax Haven Reform Act. This bill is intended to respond to the ever increasing tax shelter and tax haven abuses that are undermining the integrity of our tax system, robbing the Treasury of tens of billions of dollars each year, and shifting the tax burden from high income corporations and individuals onto the backs of the middle class. Abusive tax shelters and the misuse of tax havens must be stopped.

For more than a year, the Permanent Subcommittee on Investigations, on which I serve, has been conducting an investigation at my request into the design, sale, and implementation of abusive tax shelters. I initiated this investigation back in 2002, but it has since been carried out in a bipartisan fashion with the support of Senator COLEMAN, who is our current Subcommittee Chairman.

What the subcommittee investigation has found is that many of the abusive tax shelters were not dreamed up by the taxpayers who used them. Instead, most were devised by tax professionals, like accountants, lawyers, bankers, and investment advisors, who then sold the tax shelter to clients for a fee. In fact, as our investigation widened, we found hordes of tax advisors cooking up one complex scheme after another, packaging them up as generic ''tax products'' with boiler-plate legal and tax opinions, and then undertaking elaborate marketing schemes to peddle these products to literally thousands of persons across the country. In return, these tax shelter promoters were getting hundreds of millions of dollars in fees, while diverting billions of dollars in tax revenues from the U.S. Treasury each year.

In November 2003, our subcommittee held two days of hearings and released a report prepared by my staff which pulled back the curtain and provided an inside looks at how even some respected accounting firms, banks, investment advisors, and lawyers have become the engines pushing the design and sale of abusive tax shelters to corporations and individuals across this country. It was this investigative effort that inspired many of the provisions in the bill to combat abusive tax shelters and the professionals who promote them.

Another part of this bill results from subcommittee investigations examining how tax havens around the globe help taxpayers dodge their U.S. tax obligations, using corporate, bank, and tax secrecy laws to impede U.S. tax enforcement efforts. At one subcommittee hearing in 2001, a former owner of an offshore bank in the Caribbean testified that he believed 100% of his bank clients were engaged in tax evasion. He said that almost all were from the United States, described elaborate measures taken to avoid IRS detection of his clients' money transfers, and expressed confidence that the Government would defend client secrecy in order to attract business to the island. For the past few years, the IRS has made detection of offshore bank accounts used by individuals to conceal taxable income an enforcement priority, estimating that as many as 1 to 2 million U.S. taxpayers are hiding funds in offshore tax havens.

Corporations are also using tax havens to reduce their U.S. tax liability. A subcommittee hearing held in 2003, on an Enron tax shelter known as Slapshot, as well as Senate Finance Committee hearings on other Enron tax scams, show how corporations can utilize tax havens to avoid U.S. taxes. A GAO report recently released by Senator DORGAN and myself shows that nearly two-thirds of the top 100 companies doing business with the United States now have one or more subsidiaries in a tax haven. One company, Tyco International, has 115 tax haven subsidiaries. Data recently released by the Commerce Department further demonstrates the extent of U.S. corporate use of tax havens, indicating that, as of 2001, almost half of all foreign profits of U.S. corporations were in tax havens.

Over the years, subcommittee investigations have uncovered numerous instances of how U.S. tax enforcement efforts examining transactions, bank accounts, and other activities in tax havens have been delayed or impeded by tax haven secrecy laws and practices. This bill is intended to give the U.S. Government new tools to stop uncooperative tax havens from continuing to help corporations and individuals dodge their U.S. tax obligations.

Stop and think what is at stake here. Men and women in our military are putting their lives on the line every day for our Nation. They are in Iraq, Afghanistan, the Balkans, and now Haiti. To make sure we can provide them with the resources they need, all Americans need to contribute their fair share in taxes. Unfortunately, there are too many companies and individuals that finagle ways to avoid paying what they owe, despite the benefits they receive from this country. These tax dodgers deprive our Nation of billions of dollars in resources and add to the tax burdens of the rest of us.

Companies benefit from so much here in America: our stock market, telecommunications infrastructure, patent protections, educated workforce, research support, sophisticated financial systems, and basic law enforcement. Yet, too many companies run to use tax avoidance schemes based on abusive tax shelters and tax havens like a car speeding through a tollbooth, leaving the rest of us to pitch in the required fare and subsidize their free ride.

Corporate and individual tax dodges today take many forms. They include the following: Abusive tax shelters in which taxpayers use complex investment schemes with no real business purpose other than to evade tax; corporate inversions in which companies pretend to move their headquarters to an offshore tax haven just to avoid their U.S. tax bill; foreign tax havens in which taxpayers use bank accounts and shell entities in foreign tax havens to escape detection while dodging taxes; and structured financial transactions in which companies use shell entities in convoluted setups or improper transfer pricing schemes to avoid taxes. In most cases, these tax dodges are designed, sold and implemented by tax professionals who receive lucrative fees to help their clients avoid their tax obligations. To provide a better picture of some of these abuses, here are a few recent examples.

Perhaps the best-known corporate inverter is Tyco International, which operates out of New Hampshire and New Jersey, but claims a mailing address in Bermuda to avoid U.S. taxes. This tax dodge is a slap in the face of U.S. taxpayers, especially in light of the $300 million in Federal defense and homeland security contracts awarded to Tyco in FY 2002, as well as the months-long, taxpayer-financed prosecution of Tyco's former officers for diverting $600 million in corporate assets to their personal use. Tyco, once a proud U.S. corporation, has sunk to new lows in its attempts to avoid paying its U.S. taxes.

Corporate tax abuses aren't confined to large U.S. companies. One example of an abusive tax shelter being used by some small companies is called ''SC2,'' which was one of the tax shelters featured in our recent Subcommittee hearings and staff report. In this shelter, a closely-held corporation temporarily grants nonvoting stock to a tax-exempt charity and then allocates—on paper—a significant portion of the company's profits to that charity. Beforehand, the company takes steps to limit or suspend any obligation to actually distribute income allocated to its shareholders. The charity pays no tax on the paper profits allocated to it. When the original corporate owners eventually reclaim both the stock and undistributed profits, they claim that capital gains taxes, rather than higher ordinary income taxes, apply to the income previously allocated to the charity. The charity gets paid for its complicity, the corporate owners evade a lot of tax, and Uncle Sam is the loser.

A third tax shelter example involves a massive, $20 billion transfer pricing tax scam recently disclosed in a report issued by the bankruptcy examiner for Worldcom-MCI. The report states that Worldcom avoided paying hundreds of millions of dollars in state and Federal taxes over a four-year period, from 1998 to 2001, by claiming questionable expenses from related shell companies, including for a bogus intangible asset called ''management foresight.'' The

bankruptcy examiner, former Attorney General Richard Thornburgh, called on the company to sue its tax advisor and auditor, KPMG, for landing the company in this tax disaster, but Worldcom-MCI has, instead brazenly decided to continue using the tax dodge. This is the same company, by the way, that profits from billions of dollars in Federal and State contracts paid for—that's right—with taxpayer dollars.

The tax chiseling seems endless. Some of the tax ploys are arguably technically legal and require a change in law or regulation. Others appear blatantly illegal, yet elicit little or no penalty. Companies keep using them, and their competitors are put at a disadvantage unless they join in.

Too many respected accounting firms, financial institutions, and lawyers have joined in the sickening games by peddling tax dodges and taking a cut of the billions of dollars diverted from the U.S. Treasury. As IRS Commissioner Mark Everson has pointed out, accountants and lawyers should be the pillars of our system of voluntary tax compliance, not the architects of its circumvention.

This tax chiseling hurts average taxpayers, not only by leaving them with the burden of making up the lost revenues, but also by constricting resources for essential government programs. It is a lack of resources that results in the new Medicare drug prescription plan having a huge gap in coverage that denies elderly help with their prescription drug bills when they most need it. It's why our schools are burdened with unfunded mandates. It's why we have a giant and deepening deficit ditch threatening our children's economic well-being. The list of harmful consequences of tax dodging is long and disquieting.

The Tax Shelter and Tax Haven Reform Act we are introducing today contains a number of measures to put an end to these tax dodges:

To curb abusive tax shelters, the bill strengthens the penalties on tax shelter promoters and codifies the economic substance doctrine eliminating tax benefits for transactions that have no real business purpose or real economic impact apart from those tax benefits.

To crack down on the misuse of tax havens, we authorize Treasury to issue an annual list of ''uncooperative tax havens'' and suspend U.S. tax benefits for income attributed to those jurisdictions.

We also require the Treasury Department to issue standards for tax shelter opinion letters, and give the IRS new tools to take tough enforcement action against the accounts, lawyers, bankers and other financial professionals promoting or facilitating deceptive tax schemes.

Let me be more specific.

Title I of the bill strengthens a host of tax shelter penalties, which are currently so weak they provide no deterrent effect at all. Tow examples demonstrate the problem:

First, consider the penalty for promoting an abusive tax shelter, as set forth in section 6700 of the tax code. Currently, the penalty is the lesser of $1,000 or 100 percent of the promoter's gross income derived from the prohibited activity. That means in most cases, the maximum fine is $1,000. That figure is laughable, when many abusive tax shelters are selling for $100,000 or $250,000 a piece. Our investigation uncovered some tax shelters that were sold for $900,000 or even $2 million each, and instances in which the same cookie-cutter tax opinion letter was sold to 100 or even 200 clients. A $1,000 fine just doesn't cut it.

If further proof were needed, one document uncovered by our investigation contains the cold calculation by a senior tax professional at KPMG comparing possible tax shelter fees with possible tax shelter penalties if the firm were caught promoting an illegal tax shelter. This senior tax professional wrote the following: ''[O]ur average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.'' He then recommended the obvious—going forward with sales of the abusive tax shelter on a cost-benefit basis.

Proposals to increase the penalty for promoting abusive tax shelters have already passed the Senate three times and are included in the JOBS Act pending in the Senate. But these proposals are not tough enough to do the job that needs to be done. In general, they increase the penalty for promoting abusive tax shelters to a maximum of 50 percent of the promoters' gross income from the prohibited activity. Now, think about that. Why should anyone who illegally pushes an abusive tax shelter be allowed—if they get caught—to keep half of their profits? What deterrent effect is created by a penalty that allows promoters to keep half of their wages if caught, and all of them if they are not?

Penalities for those who peddle abusive tax shelters need to be a lot tougher. They should, first, make sure a tax shelter promoter is deprived of every penny of the profits earned from selling or providing legal advice on the shelter, and then pay a fine on top of that. Only that way is the promoter actually penalized for misconduct. Secondly, tax shelter promoters ought to face a penalty that is at least as harsh as the penalty imposed on the taxpayer who purchased their tax product, not only because the promoter is usually as culpable as the taxpayer, but also so promoters think twice about pushing tax schemes. Specifically, section 101 of the bill would increase the penalty on tax shelter promoters to an amount up to the greater of either 150 percent of the promoters' gross income from the prohibited activity, or the amount assessed against the taxpayer—including backtaxes, interest and penalties—for using the abusive shelter.

A second penalty provision in the bill involves what our investigation found to be one of the biggest problems—the knowing assistance of accounting firms, law firms, banks, and others helping taxpayers understate their taxes. Right now, under Section 6701 of the tax code, persons who knowingly aid and abet a taxpayer in understating their tax liability face a maximum penalty of $1,000 for assisting individual taxpayers and $10,000 for assisting corporate taxpayers. These paltry amounts provide no deterrent at all. Worse yet, the penalty applies only to so-called ''tax return preparers.'' Current law imposes no penalty at all on those who knowingly design and carry out the abusive tax shelter, so long as those persons don't actually prepare the taxpayer's return.

Section 102 of the bill would strengthen this penalty significantly, subjecting aiders and abettors to a maximum fine up to the greater of either 150 percent of the aider and abettor's gross income from the prohibited activity, or the amount assessed against the taxpayer for using the abusive shelter. And this penalty would apply to all aiders and abettors, not just tax return preparers.

These are just two of the penalties strengthened by the Tax Shelter and Tax Haven Reform Act. Others include stronger penalties for tax shelter promoters who fail to register a new shelter with the IRS or fail to provide the IRS with a client list when requested, and stronger penalties for taxpayers who fail to disclose a tax shelter on their tax return or fail to disclose an offshore bank account.

Title II also contains many provisions to combat abusive tax shelters, but first I want to mention Title III, which focuses on the economic substance doctrine, and Title IV which addresses offshore tax havens.

Title III of the bill would include in Federal tax statutes for the first time what is known as the economic substance doctrine. This anti-abuse doctrine was fashioned by Federal Courts asked to evaluate transactions which appeared to have little or no business purpose or economic substance apart from tax avoidance. It has become a powerful analytical tool used by courts to invalidate abusive tax shelters. At the same time, because there is no statute underlying this doctrine and the courts have developed and applied it differently in different judicial districts, the existing case law has many ambiguities and conflicting interpretations.

Under the leadership of Senators GRASSLEY and BAUCUS, the Chairman and Ranking Member of the Finance Committee, the Senate has voted three times to codify the economic substance doctrine, but it has yet to be enacted into law. Since no tax shelter legislation would be complete without addressing this issue, Title III of this comprehensive bill proposes once more to include the economic substance doctrine in the tax code.

Sections 401 and 402 in the Tax Shelter and Tax Haven Reform Act also tackle the issue of tax havens by deterring use of tax havens that fail to cooperate with U.S. tax enforcement efforts. There are dozens of jurisdictions around the world that have enacted corporate, bank, and tax secrecy laws and then, in too many cases, used these laws to justify a failure to provide timely information to U.S. law enforcement about persons suspected of either hiding funds in the jurisdiction's offshore bank accounts or using offshore corporations and deceptive transactions to disguise their income or create phony losses to shelter their income from taxation.

Section 401 of the bill would tackle the problem by giving the Treasury Secretary the discretion to designate offshore tax havens as ''uncooperative'' and to publish an annual list of these uncooperative tax havens. The Treasury Secretary is intended to develop this list by evaluating the actual record of cooperation experienced by the United States in its dealings with specific jurisdictions around the world. While many offshore tax havens have recently signed treaties with the United States promising for the first time to cooperate with U.S. civil and criminal tax enforcement, it is undetermined what level of cooperation will actually result. For example, after one country signed a tax treaty with the United States, the government that led the effort was voted out of office by treaty opponents. Treasury needs a way to ensure that tax treaty obligations are met and to send a message to jurisdictions that impede U.S. tax enforcement. This bill will help Treasury get the cooperation it needs.

in addition to authorizing Treasury to publish an annual list of uncooperative tax havens, section 401 and 402 of the bill would deter use of uncooperative tax havens by imposing two types of restrictions on taxpayers doing business in the designated jurisdictions. First, taxpayers would be required to provide greater disclosure of their activities on their tax returns, including disclosing on their returns any payment above $10,000 to a person or account located in a designated tax haven. Second, the bill would disallow any tax benefits, such as foreign tax credits or deferral of taxation, for income attributable to a designated tax haven. These restrictions would provide the United States with powerful weapons to compel tax havens to begin to cooperate with U.S. tax enforcement efforts.

In addition to addressing the need to increase tax shelter penalties, codify the economic substance doctrine and deter use of uncooperative tax havens, the bill includes a number of measures in Title II that would address other aspects of abusive tax shelters. I'd like to discuss a few of these.

Title II of the bill includes a number of additional measures to crack down on abusive tax dodges. Section 201 of the bill would, in part, direct the Department of the Treasury to issue as part of Circular 230 new standards for tax practitioners issuing opinion letters on the tax implications of tax shelters. The public has traditionally relied on tax opinion letters to obtain informed and trustworthy advice about whether a tax-motivated transaction meets the requirements of the law. The investigation conducted by the Permanent Subcommittee on Investigations found that, in too many cases, tax opinion letters no longer contain disinterested and reliable tax advice, even when issued by supposedly reputable accounting or law firms. Instead, too many tax opinion letters have become marketing tools used by tax shelter promoters and their allies to sell clients on their latest tax products. In too many of these cases, financial interests and biases were concealed, unreasonable factual assumptions were used to justify dubious legal conclusions, and taxpayers were misled about the risks that the proposed transaction would later be designated an illegal tax shelter. Reforms are essential to address these abuses and restore the integrity of tax opinion letters issued by reputable firms.

Treasury recently proposed standards that would address some of the ongoing abuses affecting tax shelter opinion letters; however, the proposed standards do not take all the steps needed. Our bill would require Treasury to issue standards addressing a wider spectrum of tax shelter opinion letter problems, including: (1) the independence of the opinion letter writer from tax shelter promoters, (2) collaboration among letter writers resulting in joint financial interest, (3) avoidance of conflicts of interest that would impair auditor independence, (4) review and approval procedures by a firm for opinion letters issued in the name of the firm, (5) reliance on reasonable factual representations, and (6) the appropriateness of fee charges. By addressing each of these areas, Circular 230 could help reduce the ongoing abusive practices related to tax shelter opinion letters.

During the November tax shelter hearings before the Permanent Subcommittee on Investigations, IRS Commissioner Mark Everson testified that his agency was barred by section 6103 of the tax code from communicating information to other Federal agencies that would assist those agencies in their law enforcement duties. He indicated, for example, that the IRS was barred from providing tax return information to the SEC, Federal bank regulators, and the Public Company Accounting Oversight Board, or PCAOB, even when that information might assist a Federal agency in evaluating whether an abusive tax shelter resulted in deceptive accounting in a public company's financial statements, whether a bank selling tax products to its clients had violated the law against promoting abusive tax shelters, or whether an accounting firm had impaired its independence by selling tax shelters to its audit clients.

These communication barriers between our key Federal civil enforcement agencies are outdated, inefficient, and ill-suited to stopping the torrent of tax shelter abuses now affecting or being promoted by so many of our public companies, banks, and accounting firms. To address this problem, section 203 of the bill would authorize the Treasury Secretary, with appropriate privacy safeguards, to disclose to the SEC, Federal banking agencies, and the PCAOB, upon request, tax return information related to abusive tax shelters, inappropriate tax avoidance, or tax evasion. The agencies could then use this information only for law enforcement purposes, such as preventing accounting firms or banks from promoting abusive tax shelters or aiding or abetting tax evasion, and detecting and punishing accounting fraud related to illegal tax shelters employed by public companies. Improved information sharing for law enforcement purposes would greatly aid our agencies in their enforcement efforts.

The bill would also provide for increased disclosure to Congress. Section 204 of the bill would make it clear, for example, that companies providing tax return preparation services to taxpayers cannot refuse to comply with a Congressional document subpoena by citing a consumer protection provision in the tax code, section 7216, prohibiting tax return preparers from disclosing taxpayer information to third parties. Several accounting and law firms raised this claim in response to document subpoenas issued by the Permanent Subcommittee on Investigations, contending they were barred by the nondisclosure provision in section 721 from producing documents related to the sale of abusive tax shelters to clients for a fee. The accounting and law firms maintained this position despite an analysis provided by the Senate legal counsel showing that the nondisclosure provision was never intended to create a privilege or to override a Senate subpoena, as demonstrated in Federal regulations interpreting the provision. To clarify the law, the bill would codify the existing regulations interpreting section 7216 and make it clear that congressional document subpoenas must be honored.

Section 204 would also ensure Congress has access to information about decisions by Treasury related to an organization's tax exempt status. A 2003 decision by the D.C. Circuit Court of Appeals, *Tax Analysts v. IRS*, struck down certain IRS regulations and held that the IRS must disclose letters denying or revoking an organization's tax exempt status to the public. The IRS has been reluctant to disclose such information, not only to the public, but also to Congress, including in response to requests by the Permanent Subcommittee on Investigations. This

section of the bill would make it clear that, upon receipt of a request form a Congressional committee or subcommittee, the IRS must disclose documents, other than a tax return, related to the agency's determination to grant, deny, revoke or restore an organization's exemption from taxation.

Still another finding of the subcommittee investigation is that tax practitioners are circumventing current State and Federal constraints on charging tax service fees that are contingent on actual or projected tax savings. Traditionally, accounting firms charged flat fees or hourly fees for their tax services. In the 1990s, however, they began charging ''value added'' fees based on, in the words of a one accounting firm's manual, ''the value of the services provided, as opposed to the time required to perform the services.'' In addition, some firms began charging ''contingent fees'' that were based on a client's obtaining specified results from the services offered, such as projected tax savings. In response, many States prohibited accounting firms from charging contingent fees for tax work to avoid creating incentives for these firms to devise ways to shelter substantial sums. The SEC and the American Institute of Certified Public Accountants also issued rules restricting contingent fees, allowing them in only limited circumstances.

The subcommittee investigation found that tax shelter fees, which are typically substantial and sometimes exceed $1 million, are often linked to the taxpayer's projected tax savings or paper losses to be used to shelter income from taxation. For example, in three tax shelters examined by the Subcommittee, documents show that the fees were equal to a percentage of the paper loss to be generated by the transaction. In one case, the fees were typically set at 7 percent of the transaction's generated ''tax loss'' that clients could sue to shelter other taxable income. In addition, other evidence indicated that, in at least some instances, a tax advisor was willing to deliberately manipulate the way it handled certain tax products to circumvent the contingent fee prohibitions. One internal document at an accounting firm related to a specific tax shelter, for example, identified the states that prohibited contingent fees. Then, rather than prohibit the tax shelter transactions in those States or require an alternative fee structure, the memorandum directed the firm's tax professionals to make sure the engagement letter was signed, the engagement was managed, and the bulk of services was performed ''in a jurisdiction that does not prohibit contingency fees.''

Right now, the prohibitions on contingent fees are complex and must be evaluated in the context of a patchwork of Federal, State and professional ethics rules. Section 205 of the bill would simplify the existing prohibitions on contingency fees by putting into place a single enforceable rule, applicable nationwide, that would prohibit tax practitioners from charging fees which are ''contingent upon the actual or projected achievement of Federal tax savings or benefits, or of losses which can be used to offset other taxable income.''

Section 206 of the bill would establish that it is the sense of the Senate that additional funds should be appropriated for IRS enforcement, and that the IRS should devote proportionately more of its enforcement funds to combat rampant tax shelter and tax haven abuses. Specifically, the bill would direct increased funding toward enforcement efforts combating the promotion of abusive tax shelters for corporations and high net worth individuals and the aiding and abetting of tax evasion; the involvement of accounting, law and financial firms in such promotion and aiding and abetting; and the use of offshore financial account to conceal taxable income.

In a bipartisan letter that was recently sent to the Senate appropriations committee by Senators COLEMAN, COLLINS, LIEBERMAN and myself, we wrote that, ''Tax enforcement is one area where a relatively small increase in spending can pay for itself many times over.'' Tens of billions in revenues that should support this country would actually reach the Treasury if we would hire adequate enforcement personnel, close the tax loopholes, and put an end to tax dodges.

It is past time to get serious about tax shelter abuses, uncooperative tax havens, and the tax dodgers who use them. This bill would send the message to tax dodgers that their shenanigans are unfair, unpatriotic, and unacceptable. We need to stop putting a disproportionate burden on the shoulders of the average American and make sure all taxpayers are paying their fair share.

I ask unanimous consent that a summary of the bill 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:

SUMMARY OF SENATOR LEVIN'S TAX SHELTER AND TAX HAVEN REFORM ACT

(See attached, more detailed summary that reflects which parts of this bill are patterned after or incorporated in the Grassley/Baucus revenue raisers that have previously passed the Senate and are included in the upcoming JOBS Act.)

Title I—Strengthen Tax Shelter Penalties:

Strengthen penalties for promoting abusive tax shelters, aiding or abetting tax evasion, failing to register or disclose potentially abusive tax shelters, failing to maintain and disclose required tax shelter client lists, and failing to disclose offshore bank accounts;

Extend statute of limitations for undisclosed tax shelters; and

Expand injunctive relief to stop certain conduct related to abusive tax shelters.

Title II—Prevent Abusive Tax Shelters:

Authorize censure, civil fines, and tax shelter opinion standards for tax practitioners;

Expand tax shelter exception to tax practitioner privilege to cover all abusive tax shelters;

Authorize IRS to disclose certain tax shelter information to certain federal agencies to strengthen civil law enforcement;

Increase disclosure of certain tax shelter promoter information to Congress;

Prohibit use of fees contingent on specified amount of tax avoidance; and

Sense of the Senate on IRS tax enforcement priorities, advocating more enforcement funds and more enforcement action to stop tax shelter promoters and combat use of offshore bank accounts to conceal taxable income.

Title III—Require Economic Substance:

Clarify and codify the economic substance doctrine;

Strenghten penalty for tax transactions lacking economic substance; and

Eliminate tax deduction for interest on unpaid taxes attributable to transactions determined to be without economic substance.

Title IV—Deter Uncooperative Tax Havens:

Require disclosure of payments to uncooperative tax havens; and

Restrict tax benefits for income earned in uncooperative tax havens.

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

Sections 101–109

Strengthens the penalties for (see chart on last page of this summary): promoting abusive tax shelters (§101); knowingly aiding or abetting a taxpayer in understating tax liability (§102); failing to register potentially abusive tax shelters with the IRS or to provide required information about such shelters to the IRS (§103, §106); failing to maintain and disclose to the IRS upon request tax shelter client lists (§104); and failing to disclose offshore bank accounts (§109).

Extends statute of limitations for undisclosed tax shelters (§107), and expands the IRS' ability to seek injunctions against tax shelter promoters and material advisors (§108). Modeled after provisions in the Grassley/Baucus legislation that has passed the Senate three times.

TITLE II—PREVENTING ABUSIVE TAX SHELTER TRANSACTIONS

Section 201—Authorize censure, civil fines, and tax shelter opinion standards for tax practitioners

Authorizes Treasury to censure or impose civil fines on tax practitioners (such as accountants and attorneys) who violate specified standards of practice in Circular 230, for persons representing clients before the IRS. Modeled after provision in the Grassley/Baucus legislation that has passed the Senate three times.

Directs Treasury to issue Circular 230 standards for tax practitioners providing ''opinion letters'' on specific tax shelter transactions. Requires standards to address: (1) independence of letter writer from tax shelter promoters, (2) collaboration among letter writers resulting in joint financial interests, (3) avoidance of conflicts of interest that would impair auditor independence, (4) review and approval by a firm of opinion letters issued in the name of the firm, (5) reasonable reliance on factual representations, and (6) the appropriateness of fee charges. Expands upon standards recently proposed by Treasury.

Section 202—Expand tax shelter exception to tax practitioner privilege

Expands existing tax shelter exception to the confidentiality privilege for communications between a federally authorized tax practitioner and taxpayer, so that the exception applies to communications not only about corporate tax shelters, but other tax

shelters as well. Modeled after provision in the Grassley/Baucus legislation that has passed the Senate three times.

Sections 203–204—Increase disclosure of certain tax shelter information

Authorizes Treasury to share certain tax return information with the SEC, federal bank regulators, or PCAOB, under certain circumstances, to enhance tax shelter enforcement or combat financial accounting fraud. (§ 204)

Clarifies that Congress has the same subpoena authority as federal, state, and local authorities to obtain information from tax return preparers. Expands Congress' authority to obtain certain tax information (but not a taxpayer return) from Treasury related to an IRS decision to grant, deny, revoke, or restore an organization's tax exempt status. (§ 205)

Section 205—Prohibit tax service fees contingent on specific tax savings

Prohibits charging a fee for tax services in an amount contingent upon the actual or projected achievement of a specified amount of tax savings or income loss to offset taxable income. Builds on existing contingent fee prohibitions in more than 20 states, AICPA rules applicable to accountants, and SEC regulations applicable to auditors of publicly traded corporations. Based upon investigation by Permanent Subcommittee on Investigations showing tax practitioners are circumventing current constraints.

Section 206—''Sense of the Senate'' on IRS Enforcement Priorities

Establishes the Sense of the Senate that additional funds should be appropriated for IRS enforcement, and that the IRS should devote proportionately more of its enforcement funds to combat: (1) the promotion of abusive tax shelters for corporations and high net worth individuals and the aiding or abetting of tax evasion, (2) the involvement of accounting, law and financial firms in such promotion and aiding or abetting, and (3) the use of offshore financial accounts to conceal taxable income.

TITLE III—REQUIRING ECONOMIC SUBSTANCE

Sections 301–303—Strengthen the Economic Substance Doctrine

Stengthens and codifies the economic substance doctrine to invalidate transactions that have no economic substance or business purpose apart from tax avoidance or evasion. Also increases penalties for understatements and eliminates deductibility of interest on unpaid taxes when the penalties or interest are attributable to a transaction lacking in economic substance. Modeled after provisions in the Grassley/Baucus legislation that has passed the Senate three times. Estimated to raise $13.7 billion over ten years.

TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

Section 401–402—Deter Uncooperative Tax Havens

Deters taxpayer use of uncooperative tax havens with corporate, bank or tax secrecy laws, procedures, or practices that impede U.S. enforcement of its tax laws by: (1) requiring disclosure on taxpayer returns of any payments above $10,000 to accounts or persons located in such tax havens (§ 401), and (2) ending tax benefits for any income earned in such tax havens (§ 402). Gives Treasury Secretary discretion to designate a tax haven as uncooperative and publish an annual list of those jurisdictions.

COMPARISON OF TITLE I PENALTY PROVISIONS—STRENGTHEN TAX SHELTER PENALTIES

Violation	Penalty		
	Current law	Provisions in JOBS Act (S. 1637)	Provisions in Tax Shelter and Tax Haven Reform Act
Promotion of abusive tax shelters. IRS § 6700	Lesser of $1,000 or 100% of the promoters' gross income derived from the prohibited activity.	50% of the promoters' gross income from the activity. (§ 415).	Not to exceed the greater of: (i) 150% of the promoters' gross income from the prohibited activity, or (ii) amount assessed against the taxpayer for using abusive shelter (including backtaxes, penalties and interest) (§ 101).
Knowingly aiding and abetting understatement of tax liability. IRC § 6701.	Maximum of $1,000 ($10,000 for a corporation). Penalty applies only to tax return preparer.	No provision included	Not to exceed the greater of: (i) 150% of the aider/abettor's gross income from the prohibited activity, or (ii) amount assessed against the taxpayer for the understatement (including backtaxes, penalties and interest). Penalty applies to all aiders/abettors, not just preparers (§ 102).
Failure to timely register with IRS a shelter or provision of false or incomplete information with respect to it. IRC § 6707(a).	Non-confidential shelter: Greater of $500 or 1% of the amount invested. Confidential shelter: Greater of $10,000 or 50% of the promoters' fees (75% if violation is intentional).	$50,000. No distinction between confidential and non-confidential. However, if relates to a tax shelter previously identified by the IRS, no less than $200,000 but not greater than 50% of the promoter's income from the shelter (75% if violation is intentional). Material advisors must also register. (§ 408).	$50,000 to $100,000. No distinction between confidential and non-confidential. However, if relates to a tax shelter previously identified by the IRS, no less than $200,000 but not greater than 100% of the promoter's income from the shelter (150% if violation is intentional). Material advisors must also register (§ 103).
Failure by taxpayer to include with return the required information regarding a potentially abusive shelter. IRC § 6707(b)(2).	$250 per failure to include tax shelter ID number, (There are additional penalties on the taxpayer that relate to understatement or underpayment.).	Significantly broadens disclosure requirements. $50,000, but $100,000 if failure relates to a tax shelter previously identified by the IRS. Doubled amounts if the taxpayer is a large entity or high net worth individual. (§ 402).	Similiar disclosure requirements as JOBS Act. $50,000, but $100,000 if failure relates to a tax shelter previously identified by the IRS. Doubled amounts if intentional (§ 105).
Failure to maintain list of participants in potentially abusive tax shelters. IRC § 6708.	$50 per name, with a maximum penalty per year of $100,000.	$10,000 per day after the person has failed for 20 days to provide a list to the IRS after the agency requested it. (§ 409).	Same as JOBS Act, plus if an incomplete list is given to the IRS, $100 per omitted investor per day (§ 104).
Failure to report interests in foreign financial accounts. 31 USC § 5321.	Maximum of $100,000, but failure must be willful for any penalty to be assessed.	Maximum of $5,000, but if willful, up to $100,000. (§ 412).	Maximum of $10,000, but if willful, minimum of $5,000 and up to 50% of the funds in the account over which the taxpayer has control (§ 109).

S. 2210

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 Shelter and Tax Haven Reform 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—STRENGTHENING TAX SHELTER PENALTIES

SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking ''a penalty'' and all that follows through the period in the first sentence of subsection (a) and inserting ''a penalty determined under subsection (b)'', and

(3) by inserting after subsection (a) the following new subsections:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed the greater of—

''(A) 150 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty, and

''(B) if readily subject to calculation, the total amount of underpayment by the taxpayer (including penalties, interest, and taxes) in connection with such activity.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

''(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 102. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ''the tax liability or'' after ''respect to,'' in paragraph (1),

(2) by inserting ''aid, assistance, procurement, or advice with respect to such'' before ''portion'' both places it appears in paragraphs (2) and (3), and

(3) by inserting ''instance of aid, assistance, procurement, or advice or each such'' before ''document'' in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed the greater of—

''(i) 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty, and

''(ii) if readily subject to calculation, the total amount of underpayment by the taxpayer (including penalties, interest, and taxes) in connection with the understatement of the liability for tax.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.''.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

''(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 103. PENALTY FOR FAILURE TO REGISTER TAX SHELTER.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION ON POTENTIALLY ABUSIVE TAX SHELTER OR LISTED TRANSACTION.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111 with respect to any potentially abusive tax shelter—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such shelter,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be not less than $50,000 and not more than $100,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 100 percent of the gross income derived by such person for providing aid, assistance, procurement, advice, or other services with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '150 percent' for '100 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) allowing the Commissioner of Internal Revenue to rescind a penalty under certain circumstances shall apply to any penalty imposed under this section.

''(d) POTENTIALLY ABUSIVE TAX SHELTERS AND LISTED TRANSACTIONS.—The terms 'potentially abusive tax shelter' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''regarding tax shelters'' and inserting ''on potentially abusive tax shelter or listed transaction''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 104. PENALTY FOR FAILING TO MAINTAIN CLIENT LIST.

(a) IN GENERAL.—Subsection (a) of section 6708 (relating to failure to maintain lists of investors in potentially abusive tax shelters) is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day. If such person makes available an incomplete list upon such request, such person shall pay a penalty of $100 per each omitted name for each day of such omission after such 20th day.

''(2) GOOD CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if, in the judgment of the Secretary, such failure is due to good cause.''.

(b) PENALTY NOT DEDUCTIBLE.—Section 6708 is amended by adding at the end the following new subsection:

''(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made by the Secretary of the Treasury after the date of the enactment of this Act.

SEC. 105. PENALTY FOR FAILING TO DISCLOSE POTENTIALLY ABUSIVE TAX SHELTER.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE POTENTIALLY ABUSIVE TAX SHELTER INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a potentially abusive tax shelter which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—Except as provided in paragraph 3, the amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR INTENTIONAL NONDISCLOSURE.—In the case of an intentional failure by any person under subsection (a), the penalty under paragraph (1) shall be $100,000 and the penalty under paragraph (2) shall be $200,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) POTENTIALLY ABUSIVE TAX SHELTER.—The term 'potentially abusive tax shelter' means any transaction with respect to which information is required to be included with a return or statement, because the Secretary has determined by regulation or otherwise that such transaction has a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a potentially abusive tax shelter which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of a penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a potentially abusive tax shelter other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact,

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

A copy of such opinion shall be provided upon written request to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Joint Committee on Taxation, or the General Accounting Office.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any potentially abusive tax shelter at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty provided by law.

''(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include potentially abusive tax shelter information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 106. IMPROVED DISCLOSURE OF POTENTIALLY ABUSIVE TAX SHELTERS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF POTENTIALLY ABUSIVE TAX SHELTERS.

''(a) IN GENERAL.—Each material advisor with respect to any potentially abusive tax shelter shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing such shelter,

''(2) information describing any potential tax benefits expected to result from the shelter, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date which is 30 days before the date on which the first sale of such shelter occurs or on any other date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, selling, implementing, or carrying out any potentially abusive tax shelter, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a potentially abusive tax shelter substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $100,000 in any other case.

''(2) POTENTIALLY ABUSIVE TAX SHELTER.—The term 'potentially abusive tax shelter' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of potentially abusive tax shelters.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF POTENTIALLY ABUSIVE TAX SHELTERS MUST KEEP CLIENT LISTS.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any potentially abusive tax shelter (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such shelter, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of potentially abusive tax shelters must keep client lists.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN CLIENT LISTS WITH RESPECT TO POTENTIALLY ABUSIVE TAX SHELTERS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain client lists with respect to potentially abusive tax shelters.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 107. EXTENSION OF STATUTE OF LIMITATIONS FOR UNDISCLOSED TAX SHELTER.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) POTENTIALLY ABUSIVE TAX SHELTERS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a potentially abusive tax shelter (as defined in section 6707A(c)) which is required under section 6011

to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 2 years after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 108. EXPANSION OF INJUNCTIVE RELIEF TO STOP CERTAIN CONDUCT RELATED TO TAX SHELTER OR UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, 6707A, 6708, or 7206.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTER OR UNDERSTATEMENT OF TAX LIABILITY.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelter or understatement of liability.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 109. PENALTY FOR FAILING 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 $10,000.

''(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, the amount of the civil penalty imposed under subparagraph (A) shall be—

''(i) not less than $5,000,

''(ii) not more than 50 percent of the amount determined under subparagraph (D), and

''(iii) 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.

TITLE II—PREVENTING ABUSIVE TAX SHELTERS

SEC. 201. CENSURE, CIVIL FINES, AND TAX OPINION STANDARDS FOR TAX PRACTITIONERS.

(a) CENSURE; IMPOSITION OF MONETARY PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX OPINION STANDARDS.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) The Secretary of the Treasury shall impose standards applicable to the rendering of written advice with respect to any potentially abusive tax shelter or any entity, plan, arrangement, or transaction which has a potential for tax avoidance or evasion. Such standards shall address, but not be limited to, the following issues:

''(1) Independence of the practitioner issuing such written advice from persons promoting, marketing, or recommending the subject of the advice.

''(2) Collaboration among practitioners, or between a practitioner and other party, which could result in such collaborating parties having a joint financial interest in the subject of the advice.

''(3) Avoidance of conflicts of interest which would impair auditor independence.

''(4) For written advice issued by a firm, standards for reviewing the advice and ensuring the consensus support of the firm for positions taken.

''(5) Reliance on reasonable factual representations by the taxpayer and other parties.

''(6) Appropriateness of the fees charged by the practitioner for the written advice.''.

SEC. 202. EXPANSION OF TAX SHELTER EXCEPTION TO TAX PRACTITIONER PRIVILEGE.

(a) IN GENERAL.—Subsection (b) of section 7525 (relating to confidentiality privileges relating to taxpayer communications) is amended to read as follows:

''(b) NO PRIVILEGE FOR COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C), 6662, or 6707A).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 203. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

''(7) DISCLOSURE OF RETURNS AND RETURN INFORMATION RELATED TO PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—

''(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission, an appropriate Federal banking agency as defined under section 1813(q) of title 12, United States Code, or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor's officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requestor to evaluate, determine, penalize, or deter conduct by a financial institution, issuer, or public accounting firm, or associated person, in connection with a potential or actual violation of section 6700 (promotion of abusive tax shelters), 6701 (aiding and abetting understatement of tax liability), or activities related to promoting or facilitating inappropriate tax avoidance or tax evasion. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

''(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if it sets forth—

''(i) the nature of the investigation, examination, or proceeding,

''(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

''(iii) the name or names of the financial institution, issuer, or public accounting firm to which such return information relates,

''(iv) the taxable period or periods to which such return information relates, and

''(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.

''(C) FINANCIAL INSTITUTION.—For the purposes of this paragraph, the term 'financial institution' means a depository institution, foreign bank, insured institution, industrial loan company, broker, dealer, investment company, investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.''.

(b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—Section 6103(i) (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—

''(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor's officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requester to evaluate the accuracy of a financial statement or report or to determine, require a restatement, penalize, or deter conduct by an issuer, investment company, or public accounting firm, or associated person, in connection with a potential or actual violation of auditing standards or prohibitions against false or misleading statements or omissions in financial statements or reports. Such disclosure shall be solely for use by such officers and employees in such investigation, examination or proceeding.

''(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if it sets forth—

''(i) the nature of the investigation, examination, or proceeding,

''(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

''(iii) the name or names of the issuer, investment company, or public accounting firm to which such return information relates,

''(iv) the taxable period or periods to which such return information relates, and

''(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 204. DISCLOSURE OF INFORMATION TO CONGRESS.

(a) DISCLOSURE BY TAX RETURN PREPARER.—

(1) IN GENERAL.—Subparagraph (B) of section 7216(b)(1) (relating to disclosures) is amended to read as follows:

''(B) pursuant to any 1 of the following documents, if clearly identified:

''(i) The order of any Federal, State, or local court of record.

''(ii) A subpoena issued by a Federal or State grand jury.

''(iii) An administrative order, summons, or subpoena which is issued in the performance of its duties by—

''(I) any Federal agency, including Congress or any committee or subcommittee thereof, or

''(II) any State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to disclosures made after the date of the enactment of this Act pursuant to any document in effect on or after such date.

(b) DISCLOSURE BY SECRETARY.—Paragraph (2) of section 6104(a) (relating to inspection of applications for tax exemption or notice of status) is amended to read as follows:

''(2) INSPECTION BY CONGRESS.—

''(A) IN GENERAL.—Upon receipt of a written request from a committee or subcommittee of Congress, copies of documents related to a determination by the Secretary to grant, deny, revoke, or restore an organization's exemption from taxation under section 501 or 527 shall be provided to such committee or subcommittee, including any application, notice of status, or supporting information provided by such organization to the Internal Revenue Service; any letter, analysis or other document produced by or for the Internal Revenue Service evaluating, determining, explaining, or relating to the tax exempt status of such organization (other than returns, unless such returns are available to the public under this section or section 6103 or 6110); and any communication between the Internal Revenue Service and any other party relating to the tax exempt status of such organization.

''(B) ADDITIONAL INFORMATION.—Section 6103(f) shall apply with respect to—

''(i) the application for exemption of any organization described in subsection (c) or (d) of section 501 which is exempt from taxation under section 501(a) for any taxable year or notice of status of any political organization which is exempt from taxation under section 527 for any taxable year, and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

''(ii) any other papers which are in the possession of the Secretary and which relate to such application,

as if such papers constituted returns.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 205. CONTINGENT FEE PROHIBITION.

(a) IN GENERAL.—Section 6701, as amended by this Act, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively,

(2) by striking ''subsection (a).'' in paragraphs (2) and (3) of subsection (g) (as redesignated by paragraph (1)) and inserting ''subsection (a) or (f).'', and

(3) by inserting after subsection (e) the following new subsection:

''(f) CONTINGENT FEE PROHIBITION.—

''(1) IN GENERAL.—Any person who makes an agreement for, charges, or collects a fee which is for services provided in connection with the internal revenue laws, and which is contingent upon the actual or projected achievement of—

''(A) Federal tax savings or benefits, or

''(B) losses which can be used to offset other taxable income,

shall pay a penalty with respect to each such fee activity in the amount determined under subsection (b).

''(2) REGULATIONS.—The Secretary may issue rules to carry out the purposes of this subsection and may provide for exceptions for fee arrangements that are in the public interest.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to fee agreements, charges, and collections made after the date of the enactment of this Act.

SEC. 206. SENSE OF THE SENATE ON TAX ENFORCEMENT PRIORITIES.

It is the sense of the Senate that additional funds should be appropriated for Internal Revenue Service enforcement efforts and that the Internal Revenue Service should devote proportionately more of its enforcement funds—

(1) to combat the promotion of abusive tax shelters for corporations and high net worth individuals and the aiding and abetting of tax evasion,

(2) to stop accounting, law, and financial firms involved in such promotion and aiding and abetting, and

(3) to combat the use of offshore financial accounts to conceal taxable income.

TITLE III—REQUIRING ECONOMIC SUBSTANCE

SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction satisfies such doctrine shall be made as provided in this subsection.

''(B) APPLICATION OF ECONOMIC SUBSTANCE DOCTRINE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction satisfies the economic substance doctrine only if—

''(I) the transaction changes in a meaningful way, apart from Federal tax effects (and, if there are any Federal tax effects, also apart from any foreign, State, or local tax effects), the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax or achievement of a tax benefit.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as satisfying the economic substance doctrine by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the

deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 302. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER POTENTIALLY ABUSIVE TAX SHELTERS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO POTENTIALLY ABUSIVE TAX SHELTER.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a potentially abusive tax shelter understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) POTENTIALLY ABUSIVE TAX SHELTER UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'potentially abusive tax shelter understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any potentially abusive tax shelter (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any potentially abusive tax shelter understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF POTENTIALLY ABUSIVE TAX SHELTER AND LISTED TRANSACTION.—For purposes of this section, the terms 'potentially abusive tax shelter' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of potentially abusive tax shelter understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of potentially abusive tax shelter understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a potentially abusive tax shelter understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any potentially abusive tax shelter understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR POTENTIALLY ABUSIVE TAX SHELTER UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a potentially abusive tax shelter understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any potentially abusive tax shelter understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph

(A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to potentially abusive tax shelter.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 303. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68, as amended by section 302, is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant information affecting the tax treatment of the item is adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item attributable to a noneconomic substance transaction and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item attributable to a noneconomic substance transaction (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which is required to pay a penalty under this section with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b) applies.

''(f) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (C), the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(B) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a noneconomic substance transaction understatement.

''(C) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68, as amended by section 302, is amended by inserting after the item relating to section 6662 the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered after the date of the enactment of this Act.

SEC. 304. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to any noneconomic substance transaction understatement (as defined in section 6662A(c)(1)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

SEC. 401. DISCLOSING PAYMENTS TO PERSONS IN UNCOOPERATIVE TAX HAVENS.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038C the following new section:

''SEC. 6038D. DETERRING UNCOOPERATIVE TAX HAVENS THROUGH LISTING AND REPORTING REQUIREMENTS.

''(a) IN GENERAL.—Each United States person who transfers money or other property directly or indirectly to any uncooperative tax haven, to any financial institution licensed by or operating in any uncooperative tax haven, or to any person who is a resident of any uncooperative tax haven shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulation prescribe, such information with respect to such transfer as the Secretary may require.

''(b) EXCEPTIONS.—Subsection (a) shall not apply to a transfer by a United States person if the amount of money (and the fair market value of property) transferred is less than $10,000. Related transfers shall be treated as 1 transfer for purposes of this subsection.

''(c) UNCOOPERATIVE TAX HAVEN.—For purposes of this section—

''(1) IN GENERAL.—The term 'uncooperative tax haven' means any foreign jurisdiction which is identified on a list maintained by the Secretary under paragraph (2) as being a jurisdiction—

''(A) which imposes no or nominal taxation either generally or on specified classes of income, and

''(B) has corporate, business, bank, or tax secrecy or confidentiality rules and practices, or has ineffective information exchange practices which, in the judgment of the Secretary, effectively limit or restrict the ability of the United States to obtain information relevant to the enforcement of this title.

''(2) MAINTENANCE OF LIST.—Not later than November 1 of each calendar year, the Secretary shall issue a list of foreign jurisdictions which the Secretary determines qualify as uncooperative tax havens under paragraph (1).

''(3) INEFFECTIVE INFORMATION EXCHANGE PRACTICES.—For purposes of paragraph (1), a jurisdiction shall be deemed to have ineffective information exchange practices if the Secretary determines that during any taxable year ending in the 12-month period preceding the issuance of the list under paragraph (2)—

''(A) the exchange of information between the United States and such jurisdiction was inadequate to prevent evasion or avoidance of United States income tax by United States persons or to enable the United States effectively to enforce this title, or

''(B) such jurisdiction was identified by an intergovernmental group or organization of which the United States is a member as uncooperative with international tax enforcement or information exchange and the United States concurs in the determination.

''(d) PENALTY FOR FAILURE TO FILE INFORMATION.—If a United States person fails to furnish the information required by subsection (a) with respect to any transfer within the time prescribed therefor (including extensions), such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 20 percent of the amount of such transfer.

''(e) SIMPLIFIED REPORTING.—The Secretary may by regulations provide for simplified reporting under this section for United States persons making large volumes of similar payments.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 6038C the following new item:

''Sec. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date which is 180 days after the date of the enactment of this Act.

SEC. 402. DETERRING UNCOOPERATIVE TAX HAVENS BY RESTRICTING ALLOWABLE TAX BENEFITS.

(a) LIMITATION ON DEFERRAL.—

(1) IN GENERAL.—Subsection (a) of section 952 (defining subpart F income) is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by inserting after paragraph (5) the following new paragraph:

''(6) an amount equal to the applicable fraction (as defined in subsection (e)) of the income of such corporation other than income which—

''(A) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph or paragraph (3)(A)(i)), or

''(B) is described in subsection (b).''.

(2) APPLICABLE FRACTION.—Section 952 is amended by adding at the end the following new subsection:

''(e) IDENTIFIED TAX HAVEN INCOME WHICH IS SUBPART F INCOME.—

''(1) IN GENERAL.—For purposes of subsection (a)(6), the term 'applicable fraction' means the fraction—

''(A) the numerator of which is the aggregate identified tax haven income for the taxable year, and

''(B) the denominator of which is the aggregate income for the taxable year which is from sources outside the United States.

''(2) IDENTIFIED TAX HAVEN INCOME.—For purposes of paragraph (1), the term 'identified tax haven income' means income for the taxable year which is attributable to a foreign jurisdiction for any period during which such jurisdiction has been identified as an uncooperative tax haven under section 6038D(c).

''(3) REGULATIONS.—The Secretary shall prescribe regulations similar to the regulations issued under section 999(c) to carry out the purposes of this subsection.''.

(b) DENIAL OF FOREIGN TAX CREDIT.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) REDUCTION OF FOREIGN TAX CREDIT, ETC., FOR IDENTIFIED TAX HAVEN INCOME.—

''(1) IN GENERAL.—Notwithstanding any other provision of this part—

''(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any foreign jurisdiction if such taxes are with respect to income attributable to a period during which such jurisdiction has been identified as an uncooperative tax haven under section 6038D(c), and

''(B) subsections (a), (b), (c), and (d) of section 904 and sections 902 and 960 shall be applied separately with respect to all income of a taxpayer attributable to periods described in subparagraph (A) with respect to all such jurisdictions.

''(2) TAXES ALLOWED AS A DEDUCTION, ETC.—Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

''(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign jurisdiction to which this subsection applies if such income was, without regard to such entities, derived from such jurisdiction.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Ms. COLLINS (for herself, Mr. BAYH, Mrs. DOLE, and Mr. GRAHAM of South Carolina):

S. 2212. A bill to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries; to the Committee on Finance.

Ms. COLLINS. Mr. President, Our Nation's manufacturers can compete against the best in the world, but they cannot compete against nations that provide huge subsidies and other unfair advantages to their producers. I hear from manufacturers in my State time and time again whose efforts to compete successfully in the global economy simply cannot overcome the practices of illegal pricing and subsidies of nations such as China. The results of these unfair practices are lost jobs, shuttered factories, and decimated communities.

Our Nation's trade remedy laws are intended to give American industries and their employees relief from the effects of illegal trade practices. Yet, while U.S. anti-dumping laws can be currently applied to non-market economies, countervailing duty laws cannot. It is time that this was changed.

This is why I am introducing the ''Stopping Overseas Subsidies Act.'' This bill revises current trade remedy laws to ensure that U.S. countervailing duty laws apply to imports from nonmarket economies. It is simply not fair to prevent U.S. industries from seeking redress from these unfair trade practices because our trade remedy laws are outdated.

Over the past two decades, there have been significant economic changes in many of the countries classified as non-market economies. This is particularly true in China, one of our largest trading partners and the country with which the United States currently runs its largest trade deficit.

At the time our Nation's countervailing duty laws were approved in 1979, it was impracticable to apply these laws to China. In 1979, China's economy was still centrally planned, and most of its economic output was directed and controlled by the state, which set production goals, controlled prices, and allocated the country's resources. When an entire economy is controlled by the government, it is difficult, if not impossible, to determine what defines a government subsidy that causes harm to U.S. industries.

But beginning in the early 1980's and continuing today, China has undertaken major economic reforms. Today, China's economy is a far cry from being completely state-controlled. Government price controls on a wide range of products have been eliminated. Many enterprises and even entire industries have been allowed to operate and compete in an economic system that has elements of a free market. Many coastal regions and coastal cities in China have been designated as so-called ''open'' cities and development zones, where there is a free market and tax and trade incentives are offered to attract foreign investment. And, of course, china has taken steps toward fully integrating into the global trading system by joining to the World Trade Organization and by working toward the establishment of a modern commercial, financial, legal, and regulatory infrastructure.

The problem is not China's economic liberalization and modernization. The problem is this: now that China has the capacity to be a key international economic player, the country has repeatedly refused to comply with standard international trading rules and practices. And these violations include the use of subsidies and other economic incentives that are designed to give its producers an unfair competitive advantage.

The most glaringly obvious subsidy comes in the form of currency manipulation. By keeping the Chinese yuan pegged to the U.S. dollar at artificially low levels, the Chinese undervalue the prices of their exports. Not only does this practice provide their producers with a price advantage, but also it violates the International Monetary Fund and WTO rules. The Chinese government also reimburses many enterprises for their operating losses and provides loans to uncreditworthy companies.

Currently, U.S. industries have no direct recourse to combat these unfair practices. They instead must rely upon government-to-government negotiations or the dispute settlement processes of international organizations such as the WTO. While these channels might eventually lead to relief, it usually takes years to see results—and by that time, that industry could already be decimated.

Mr. President, unfair market conditions cannot continue to cause our manufacturers to hemorrhage jobs. No State understands this more than my home State of Maine. According to a study by the National Association of Manufacturers, on a percentage basis, Maine has lost more manufacturing jobs in the past three years than any other State.

There are many reasons for manufacturing job losses, including heavy tax and regulatory burdens. This is why I recently introduced a bill that would provide a variety of tax incentives for our Nation's manufacturers. However, without a level international playing field, tax reductions will not be enough to stop the flight of U.S. manufacturing jobs.

Industries across Maine that produce products ranging from paper to footwear to furniture are being harmed by unfair trade practices, and it is time that we put a stop to it. I ask you to join me in supporting the SOS bill to ensure that all countries are held accountable for their trade practices.

By Mr. ROCKEFELLER:

S. 2213. A bill to amend part A of title IV of the Social Security Act to require the Secretary of Health and Human Services to conduct research on indicators of child well-being; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am pleased to introduce legislation today designed to enhance child well-being in every State by collecting data on a State-by-State basis to provide information to advocates and policy makers about the well-being of children. My hope is that this legislation could be incorporated into a welfare reform reauthorization package. I believe that the Senate should reauthorize our welfare program, known as Temporary Assistance to Needy Families (TANF), and we should do it soon. But when we reauthorize TANF we must significantly invest in child care which is essential for parents to move from welfare to work, and to be successful on the job once they leave the official welfare rolls.

In 1996 this body took a bold step forward in reforming welfare. The driving force behind this reform was to promote work and self-sufficiency for families and to provide flexibility to States to achieve these goals.

States have used this flexibility to design different programs that work better for families who rely on them. Because of vast variation among State programs, there is an obvious need for research on child well-being for each State. We currently use the Survey of Income and Program Participation (SIPP) to evaluate the progress of welfare. It is an important national longitudinal study designed to provide rich, detailed data; the kinds of data most useful to academic researchers. It does not, however, provide States with good, timely data to help them more effectively accomplish the goals set forth in welfare reform.

This bill, the State Child Well Being Research Act of 2004, is intended to fill this information gap by collecting timely, State-specific data that can be used by policy-makers, researchers, and child advocates to assess the well being of children. It would require that a survey examine the physical and emotional health of children, adequately represent the experiences of families in individual States, be consistent across States, be collected annually, articulate results in easy to understand terms, and focus on low-income children and families.

The proposed legislation will provide data for all States, including small rural States like West Virginia. Further, this bill avoids some of the other problems that plague the current system by making data files easier to use and more readily available. As a result, the information will be more useful for policy-makers managing welfare reform and programs for children and families. When we reauthorize welfare reform, it will be essential for us to make a modest investment in research for every State.

Several private charitable foundations, including the Annie E. Casey, John D. and Catherine T. MacArthur, and McKnight foundations have written Chairman GRASSLEY and Senator BAUCUS in support of such research. These foundations have offered to form a partnership to provide outreach and support and to guarantee that the data

collected would be broadly disseminated. This type of public-private partnership helps to leverage additional resources for children and families and increases the study's impact.

One of the most important ways that Congress can demonstrate its commitment to welfare reform and attempt to help States reach the goals outlined in 1996 is to incorporate a strong research component in the welfare reform reauthorization bill. Since each State has used its flexibility to creative innovative welfare reform programs, and many are quite different, we need State-by-State data on basic aspects of child well-being. I hope that my colleagues will support this bill so that we can give States the information they need to monitor and improve child well-being.

By Mr. BURNS:

S. 2214. A bill to designate the facility of the United States Postal Service located at 3150 Great Northern Avenue in Missoula, Montana, as the ''Mike Mansfield Post Office''; to the Committee on Governmental Affairs.

Mr. BURNS. Mr. President, it is my honor to present this bill to designate the United States Postal Service facility at 3150 Great Northern Avenue in Missoula, MT as the ''Mike Mansfield Post Office.''

I rise today not just as a Republican honoring a Democrat, but rather as a Montanan recognizing the most beloved political figure of our history. Mr. Mansfield holds a special place in the hearts of all Montanans, a man whose wisdom, humility, and decency have been sorely missed.

Michael Joseph Mansfield was born in New York City on March 16, 1903. Following the death of his mother at age 7, Mike was sent to Great Falls, MT to live with an aunt and uncle.

As World War I developed, the 14-year-old Mansfield saw an opportunity to serve his country, and lied about his age in order to join the U.S. Navy. He eventually enlisted in the Army and Marine Corps as well. During this service he was stationed in the Philippines and China, a time that marked the beginning of a lifelong love for the continent, its people, and their culture.

After being honorably discharged from the Marines, Mike Mansfield returned to Montana as a 19-year-old lacking a high school education. He found a job in the Butte mines, shoveling rock as a 'mucker.' It was during his time in Butte that Mr. Mansfield met his lifetime partner and companion, Maureen Hayes. It was Maureen who saw in Mike his enormous potential and convinced him to go to college. With her financial support, Mansfield obtained his high school equivalency, B.A., and M.A. from the Montana State University, now the University of Montana. Mr. Mansfield taught Latin American and East Asian history for 8 years at the University, retaining lifelong tenure as Professor of History.

Mr. Mansfield began his extraordinary public service career in 1942 when he was elected to the U.S. House of Representatives. He served four more terms before being elected to the Senate in 1952. Within 4 years, he was elected majority whip and in 1961 he was chosen as the Senate Majority Leader. Mike would go on to hold this position for 17 years, longer than any other man in the history of this great body.

As Senate Majority Leader, Mr. Mansfield is remembered as a truly unique figure, a pragmatist whose sensibility, practicality, and unrelenting pursuit of results almost always transcended ideological concerns. More Senate leader than Majority Leader, Mansfield preferred not to draw a metaphorical line in the sand. Instead, he sought to guide the body as a whole to a fair and agreeable determination.

In 1977, upon his retirement from the Senate, Mr. Mansfield was appointed Ambassador to Japan by President Carter; a post he held through 1989. This position offered Mike a chance to utilize his vast experience in Asian affairs, in a region that he truly loved. In the spirit of this admiration, the Maureen and Mike Mansfield Foundation continues to encourage dialogue and cooperation between the United States and Asia.

Ladies and gentlemen of the Senate, this dedication of a postal facility is but a small token of gratitude for the many years of exceptional service given to this body, this Nation, and Montana by this wonderful man. The ever modest and humble Mansfield would have shied at such a tribute; we might even expect him to offer the names of people more deserving of the honor than he. In truth, I can think of no one more deserving of praise than Mike Mansfield, a true hero of the Senate.

By Mr. REED (for himself, Mr. DEWINE, Mrs. CLINTON, and Mr. SMITH):

S. 2215. A bill to amend the Higher Education Act of 1965 to provide funds for campus mental and behavioral health service centers; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce the Campus Care and Counseling Act along with my colleague from Ohio, Senator DEWINE, my colleague from Oregon, Senator SMITH and my colleague from New York, Senator CLINTON. The recent rash of suicides on college campuses has highlighted a mental health crisis. Just this past week, Diana Chien, a 19 year old student at New York University ended her life by jumping off a building. Our own colleagues, the Senator from Oregon, suffered a tragic loss when his son, Garret, took his life last September. Suicides take the lives of over 4,000 children and young adults annually. It is now the third leading cause of death among 10–24 year olds. The rate of suicide has tripled from 1952 to 1995. How many more of our children will be lost before we take action to prevent their untimely demise? When will we start to say to them that there is an answer; that suicide is not the way out; that we can help them feel better; that they can live happier and healthier lives?

College is a time of great intellectual development—and it is also a time of exponential personal and interpersonal growth and change. When children go off to college, we need to be sure that they are going to a place that will help them reach their boundless potential. We also need to make sure that it will also support them through the transition to adulthood and during their greatest hour of need. Additionally, many more adults are going to college, and they too face challenges, particularly in balancing school, work, and family responsibilities. We can and should do more to address the significant lack in this area.

A Chronicle of Higher Education survey found that rates for depression in college freshmen have nearly doubled from 8.2 percent to 16.3 percent. Without treatment, the Chronicle reports that ''depressed adolescents are at risk for school failure, social isolation, promiscuity, self-medication with drugs and alcohol, and suicide.'' A 2003 Gallagher's Survey of Counseling Center Directors found that 85 percent of college counseling centers are reporting an increase in the number of students in need of services, 81 percent were concerned about increasing numbers of students with severe psychological problems, 67 percent reported a need for more psychiatric services, and 6.3 percent reported problems with growing demand for services without an appropriate increase in resources. Clearly, many students with serious needs do not have access to psychiatric or other mental and behavioral health services.

This is an issue that my office has been working on with the American Psychological Association since 2002. In light of the forthcoming debate on the Higher Education Act Reauthorization and the recent spate of college campus suicides, I am introducing the ''Campus Care and Counseling Act.'' This bill amends the Higher Education Act to authorize $10 million in peer-reviewed competitive grants to institutions of higher education to increase access and enhance mental and behavioral health services for our college students. Grants may be used for the prevention, screening, early intervention, assessment, treatment, management, and education activities related to mental and behavioral health problems. Taking into consideration that education creates awareness, these funds may also be used to educate parents, to hire staff, and to expand training. To address the stigma of mental illness, programs funded through this grant will need to focus their efforts on developing outreach strategies to reach those students most in need of services.

My colleagues in the Senate, this is an important bipartisan measure which will help to ensure that our nation's college students will have access to quality mental and behavioral health care so that they receive the help needed to not only survive through their difficult times in college, but also to excel and accomplish all that is within their reach. I want to also thank the American Psychiatric Association and other organizations for their assistance in shaping this legislation. I urge my colleagues to join myself and Senators DEWINE and SMITH in enacting this important legislation.

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

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

S. 2215

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Campus Care and Counseling Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In a recent report, a startling 85 percent of college counseling centers revealed an increase in the number of students they see with psychological problems. Furthermore, the American College Health Association found that 61 percent of college students reported feeling hopeless, 45 percent said they felt so depressed they could barely function, and 9 percent felt suicidal.

(2) There is clear evidence of an increased incidence of depression among college students. According to a survey described in the Chronicle of Higher Education (February 1, 2002), depression among freshmen has nearly doubled (from 8.2 percent to 16.3 percent). Without treatment, researchers recently noted that ''depressed adolescents are at risk for school failure, social isolation, promiscuity, self medication with drugs and alcohol, and suicide—now the third leading cause of death among 10–24 year olds.''.

(3) Researchers who conducted the study ''Changes in Counseling Center Client Problems Across 13 Years'' (1989–2001) at Kansas State University stated that ''students are experiencing more stress, more anxiety, more depression than they were a decade ago.'' (The Chronicle of Higher Education, February 14, 2003).

(4) According to the 2001 National Household Survey on Drug Abuse, 20 percent of full-time undergraduate college students use illicit drugs.

(5) The 2001 National Household Survey on Drug Abuse also reported that 18.4 percent of adults aged 18 to 24 are dependent on or abusing illicit drugs or alcohol. In addition, the study found that ''serious mental illness is highly correlated with substance dependence or abuse. Among adults with serious mental illness in 2001, 20.3 percent were dependent on or abused alcohol or illicit drugs, while the rate among adults without serious mental illness was only 6.3 percent.''.

(6) A 2003 Gallagher's Survey of Counseling Center Directors found that 81 percent were concerned about the increasing number of students with more serious psychological problems, 67 percent reported a need for more psychiatric services, and 63 percent reported problems with growing demand for services without an appropriate increase in resources.

(7) The International Association of Counseling Services accreditation standards recommend 1 counselor per 1,000 to 1,500 students. According to the 2003 Gallagher's Survey of Counseling Center Directors, the ratio of counselors to students is as high as 1 counselor per 2,400 students at institutions of higher education with more than 15,000 students.

SEC. 3. MENTAL AND BEHAVIORAL HEALTH SERVICES ON CAMPUS.

Part B of title I of the Higher Education Act of 1965 (20 U.S.C. 1011 et seq.) is amended by inserting after section 120 the following:

''SEC. 120A. MENTAL AND BEHAVIORAL HEALTH SERVICES ON CAMPUS.

''(a) PURPOSE.—It is the purpose of this section to increase access to, and enhance the range of, mental and behavioral health services for students so as to ensure that college students have the support necessary to successfully complete their studies.

''(b) PROGRAM AUTHORIZED.—From funds appropriated under subsection (j), the Secretary shall award competitive grants to institutions of higher education to create or expand mental and behavioral health services to students at such institutions, to provide such services, and to develop best practices for the delivery of such services. Such grants shall, subject to the availability of such appropriations, be for a period of 3 years.

''(c) ELIGIBLE GRANT RECIPIENTS.—Any institution of higher education that seeks to provide, or provides, mental and behavioral health services to students is eligible to apply, on behalf of such institution's treatment provider, for a grant under this section. Treatment providers may include entities such as—

''(1) college counseling centers;

''(2) college and university psychological service centers;

''(3) mental health centers;

''(4) psychology training clinics;

''(5) institution of higher education supported, evidence-based, mental health and substance abuse screening programs; and

''(6) any other entity that provides mental and behavioral health services to students at an institution of higher education.

''(d) APPLICATIONS.—Each institution of higher education seeking to obtain a grant under this section shall submit an application to the Secretary. Each such application shall include—

''(1) a description of identified mental and behavioral health needs of students at the institution of higher education;

''(2) a description of currently available Federal, State, local, private, and institutional resources to address the needs described in paragraph (1) at the institution of higher education;

''(3) an outline of program objectives and anticipated program outcomes, including an explanation of how the treatment provider at the institution of higher education will coordinate activities under this section with existing programs and services;

''(4) the anticipated impact of funds provided under this section in improving the mental and behavioral health of students attending the institution of higher education;

''(5) outreach strategies, including ways in which the treatment provider at the institution of higher education proposes to reach students, promote access to services, and address the range of needs of students;

''(6) a proposed plan for reaching those students most in need of services;

''(7) a plan to evaluate program outcomes and assess the services provided with funds under this section; and

''(8) such additional information as is required by the Secretary.

''(e) PEER REVIEW OF APPLICATIONS.—

''(1) PANEL.—The Secretary shall provide the applications submitted under this section to a peer review panel for evaluation. With respect to each application, the peer review panel shall recommend the application for funding or for disapproval.

''(2) COMPOSITION OF PANEL.—

''(A) IN GENERAL.—The peer review panel shall be composed of—

''(i) experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under this section; and

''(ii) mental and behavioral health professionals and higher education professionals.

''(B) NON-FEDERAL GOVERNMENT EMPLOYEES.—A majority of the members of the peer review panel shall be individuals who are not employees of the Federal Government.

''(3) EVALUATION AND PRIORITY.—The peer review panel shall—

''(A) evaluate the applicant's proposal to improve current and future mental and behavioral health at the institution of higher education; and

''(B) give priority in recommending applications for funding to proposals that—

''(i) provide direct service to students, as described in subsection (f)(1);

''(ii) improve the mental and behavioral health of students at institutions of higher education with a counselor to student ratio greater than 1 to 1,500; or

''(iii) will best serve students based on the projected impact of the proposal on mental and behavioral health at the institution of higher education as well as the level of coordination of other resources to aid in the improvement of mental and behavioral health.

''(f) USE OF FUNDS.—Funds provided by a grant under this section may be used for 1 or more of the following activities:

''(1) Prevention, screening, early intervention, assessment, treatment, management, and education of mental and behavioral health problems of students enrolled at the institution of higher education.

''(2) Education of families to increase awareness of potential mental and behavioral health issues of students enrolled at the institution of higher education.

''(3) Hiring appropriately trained staff, including administrative staff.

''(4) Strengthening and expanding mental and behavioral health training opportunities in internship and residency programs, such as psychology doctoral and post-doctoral training.

''(5) Supporting the use of evidence-based and emerging best practices.

''(6) Evaluating and disseminating outcomes of mental and behavioral health services so as to provide information and training to other mental and behavioral health entities around the Nation that serve students enrolled in institutions of higher education.

''(g) ADDITIONAL REQUIRED ELEMENTS.—Each institution of higher education that receives a grant under this section shall—

''(1) provide annual reports to the Secretary describing the use of funds, the program's objectives, and how the objectives were met, including a description of program outcomes;

''(2) perform such additional evaluation as the Secretary may require, which may include measures such as—

''(A) increase in range of services provided;

''(B) increase in the quality of services provided;

''(C) increase in access to services;

''(D) college continuation rates;

''(E) decrease in college dropout rates; and

''(F) increase in college graduation rates; and

''(3) coordinate such institution's program under this section with other related efforts on campus by entities concerned with the mental, health, and behavioral health needs of students.

''(h) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this section shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

''(i) LIMITATIONS.—

''(1) PERCENTAGE LIMITATIONS.—Not more than—

''(A) 5 percent of grant funds received under this section shall be used for administrative costs; and

''(B) 20 percent of grant funds received under this section shall be used for training costs.

''(2) PROHIBITION ON USE FOR CONSTRUCTION OR RENOVATION.—Grant funds received under this section shall not be used for construction or renovation of facilities or buildings.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section $10,000,000 for fiscal year 2005 and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

By Mr. FRIST:

S. 2217. A bill to improve the health of health disparity populations; to the Committee on Finance.

Mr. FRIST: Mr. President, today I am introducing additional legislation to address health disparities.

On February 12th I joined with Senator LANDRIEU, Senator COCHRAN, Senator DEWINE, Senator BOND and Senator TALENT to introduce the ''Closing the Health Care Gap Act of 2004.'' Today I am introducing similar legislation to that introduced several weeks ago with one significant addition. This additional provision directly addresses the problem of access to health insurance for low income Americans.

We know that millions of Americans still experience disparities in health outcomes as a result of ethnicity, race, gender, or limited access to quality health care. For example, disparity populations exhibit poorer health outcomes and have higher rates of HIV/AIDS, diabetes, infant mortality, cancer, heart disease, and other illnesses. African Americans and Native Americans die younger than any other racial or ethnic group. African Americans and Native American babies die at significantly higher rates than the rest of the population. African Americans, Hispanic Americans and Native Americans are at least twice as likely to suffer from diabetes and experience serious complications from diabetes.

These gaps are simply unacceptable. Every American deserves the best quality of health care possible, regardless of their race, ethnicity, gender, or where they live.

There is a growing awareness on the national level of the existence and importance of the serious disparities in the quality of health care that many minority and underserved Americans receive. And this presents us with an important opportunity to move forward.

The legislation we introduced on February 12th and the legislation I introduce today does this by focusing on these 5 key areas: expanding access to quality health care; strengthening national efforts and coordination; helping increase the diversity of health professionals; promoting more aggressive health professional education intended to reduce barriers to care; and enhancing research to identify sources of racial, ethnic, and geographic disparities and assess promising intervention strategies.

However, the legislation I am introducing today goes farther. This legislation includes a provision based on President Bush's proposal to provide refundable health insurance tax credits to lower income Americans. I believe that the improved access to affordable medical care fostered by this tax credit will be yet one more critical component to the overall effort to reduce disparities in health care for America's vulnerable populations.

My intention is to continue to build awareness of these health care disparities and thereby provide the basis for bipartisan efforts to fight and reduce them. I think today's bill introduction represents yet another key step in this process. It is my hope that, working together, members of this body can make substantial progress in reducing and eliminating disparities.

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

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

S. 2217

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Closing the Health Care Gap Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The overall health of Americans has dramatically improved over the last century, and Americans are justifiably proud of the great strides that have been made in the health and medical sciences.

(2) As medical science and technology have advanced at a rapid pace, however, the health care delivery system has not been able to provide consistently high quality care to all Americans.

(3) In particular, people of lower socioeconomic status, racial and ethnic minorities, and medically underserved populations have experienced poor health and challenges in accessing high quality health care.

(4) Recent studies have raised significant questions regarding differences in clinical care provided to racial and ethnic minorities and other health disparity populations. These differences are often grouped together under the broad heading of ''health disparities''.

(5) Studies indicate that a gap exists between ideal health care and the actual health care that some Americans receive.

(6) Data collection, analysis, and reporting by race, ethnicity, and primary language across federally supported health programs are essential for identifying, understanding the causes of, monitoring, and eventually eliminating health disparities.

(7) Current health related data collection and reporting activities largely reflect the efforts of the Department of Health and Human Services. Despite considerable efforts by the Department, data collection efforts governing racial, ethnic, and health disparity populations remain inconsistent and inadequate. They often quantify disparities but shed little light on their causes.

(8) Many Americans, and particularly racial and ethnic minorities and other health disparity populations, miss opportunities for preventive medical care. Similarly, management of chronic illnesses in these populations presents unique challenges to the nation's health care system.

(9) The largest numbers of the medically underserved are white individuals, and many of them have the same health care access problems as do members of minority groups. Nearly 22,000,000 white individuals live below the poverty line with many living in nonmetropolitan, rural areas such as Appalachia, where the high percentage of countries designated as health professional shortage areas (47 percent) and the high rate of poverty contribute to disparity outcomes. However, there is a higher proportion of racial and ethnic minorities in the United States represented among the medically underserved.

(10) While much research examines the question of racial and ethnic differences in health care, less is known about the magnitude and extent of differences in the quality of health care related to nonsocioeconomic factors. Only recently have scientists and quality improvement experts begun to address the issue of how best to measure, track, and improve quality of health care in diverse populations. Additional research in order to understand the

causes of disparities and develop effective approaches to eliminate these gaps in health care quality will be necessary.

(11) There is a need to ensure appropriate representation of racial and ethnic minorities, and other health disparity populations, in the health care professions and in the fields of biomedical, clinical, behavioral, and health services research.

(12) Preventable disparities in access to and quality of health care are unacceptable. Health care delivered in the United States should be care that is as safe, effective, patient-centered, timely, efficient and equitable as possible.

TITLE I—IMPROVED HEALTH CARE QUALITY AND EFFECTIVE DATA COLLECTION AND ANALYSIS

SEC. 101. STANDARDIZED MEASURES OF QUALITY HEALTH CARE.

(a) IN GENERAL.—

(1) COLLABORATION.—The Secretary of Health and Human Services, the Secretary of Defense, the Secretary of Veterans Affairs, the Director of the Indian Health Service, and the Director of the Office of Personnel Management (referred to in this section as the ''Secretaries'') shall work collaboratively to establish uniform, standardized health care quality measures across all Federal Government health programs. Such measures shall be designed to assess quality improvement efforts with regard to the safety, timeliness, effectiveness, patient-centeredness, and efficiency of health care delivered across all federally supported health care delivery programs including those in which health care services are delivered to health disparity populations.

(2) DEVELOPMENT OF MEASURES.—Relying on earlier work by the Secretary of Health and Human Services or others (including work such as the Healthy People 2010 or the IOM Quality Chasm reports) and with an emphasis on health conditions disproportionately affecting health disparity populations and taking into account health literacy and primary language and cultural factors, the Secretaries shall develop standardized sets of quality measures for—

(A) 5 common health conditions by not later than January 1, 2006; and

(B) an additional 10 common health conditions by not later than January 1, 2007.

(3) PILOT TESTING.—Each federally administered health care program may conduct a pilot test of the quality measures developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

(b) PUBLIC REPORTING REQUIREMENTS.—The Secretaries shall work collaboratively to establish standardized public reporting requirements for clinicians, institutional providers, and health plans in each of the health programs described in subsection (a).

(c) FULL IMPLEMENTATION.—The Secretaries shall work collaboratively to prepare for the full implementation of all standardized sets of quality measures and reporting systems developed under subsections (a) and (b) by not later than January 1, 2009.

(d) PROGRESS REPORT.—The Secretary of Health and Human Services shall prepare an annual progress report that details the collaborative efforts carried out under subsection (a).

(e) COMPARATIVE QUALITY REPORTS.—Beginning on January 1, 2008, in order to make comparative quality information available to health care consumers, including members of health disparity populations, health professionals, public health officials, researchers, and other appropriate individuals and entities, the Secretaries shall provide for the pooling and analysis of quality measures collected under this section. Nothing in this section shall be construed as modifying the privacy standards under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(f) ONGOING EVALUATION OF USE.—The Secretary of Health and Human Services shall ensure the ongoing evaluation of the use of the health care quality measures established under this section.

(g) EXISTING ACTIVITIES.—Notwithstanding any other provision of law, the standardized measures and reporting activities described in this section shall replace, to the extent practicable and appropriate, any existing measurement and reporting activities currently utilized by federally supported health care delivery programs.

(h) EVALUATION.—

(1) INSTITUTE OF MEDICINE.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall request the Institute of Medicine to conduct an evaluation of the collaborative efforts of the Secretaries to establish uniform, standardized health care quality measures and reporting requirements for federally supported health care delivery programs as required under this section.

(B) REPORT.—Not later than 2 years after the date of enactment of this Act, the Institute of Medicine shall submit a report concerning the results of the evaluation under subparagraph (A) to the Secretary.

(2) REGULATIONS.—

(A) PROPOSED.—Not later than 18 months after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish proposed regulations regarding the uniform, standardized health care quality measures and reporting requirements described in this section.

(B) FINAL REGULATIONS.—Not later than 3 years after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish final regulations regarding the uniform, standardized health care quality measures and reporting requirements described in this section.

SEC. 102. DATA COLLECTION.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall—

(1) ensure that data collected under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) are accurate by race, ethnicity, and primary language and available for inclusion in the National Health Disparities Report;

(2) enforce State data collection and reporting by race, ethnicity, and primary language for enrollees in the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and the State Children's Health Insurance Program under title XXI of such Act (42 U.S.C. 1397aa et seq.) and ensure that such data are available for inclusion in the National Health Disparities Report;

(3) ensure that ongoing and any new program initiatives—

(A) collect and report data by race, ethnicity, and primary language and provide technical assistance to promote compliance;

(B) address technological difficulties;

(C) ensure privacy and confidentiality of data collected; and

(D) implement effective educational strategies;

(4) expand educational programs to inform insurers, providers, agencies and the public of the importance of data collection by race, ethnicity, and primary language to improving health care access and quality;

(5) raise awareness that these data are critical for achieving Healthy People 2010 goals and essential to the nondiscrimination requirements of title VI of the Civil Rights Act (42 U.S.C. 2000d et seq.); and

(6) support research on existing best practices for data collection.

(b) GRANTS FOR DATA COLLECTION BY HEALTH PLANS, HEALTH CENTERS, AND HOSPITALS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, may support or conduct not to exceed 20 demonstration programs to enhance the collection, analysis, and reporting of the data required under this section.

(2) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

(A) be a health plan, federally qualified health center or health center network, or hospital; and

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such as information as the Secretary may require.

(3) USE OF FUNDS.—A grantee shall use amounts received under a grant under this subsection to—

(A) collect, analyze, and report data by race, ethnicity, or other health disparity category for patients served by the grantee, including—

(i) in the case of a hospital, emergency room patients and patients served on an inpatient or outpatient basis;

(ii) in the case of a health plan, data for enrollees; and

(iii) in the case of a federally qualified health center or health center network, primary care, specialty care, and referrals;

(B) provide analyses of racial, ethnic and other disparities in health and health care, including specific disease conditions, diagnostic and therapeutic procedures, or outcomes;

(C) improve health data collection and analysis for additional population groups beyond the Office of Management and Budget categories if such groups can be aggregated into the minimum race and ethnicity categories;

(D) develop mechanisms for sharing collected data, subject to applicable privacy and confidentiality regulations;

(E) develop educational programs to inform health insurance issuers, health plans, health providers, health-related agencies, patients, enrollees, and the general public that data collection, analysis, and reporting by race, ethnicity, and preferred language are legal and essential for eliminating disparities in health and health care; and

(F) ensure the evaluation of activities conducted under this section.

TITLE II—EXPANDED ACCESS TO QUALITY HEALTH CARE

Subtitle A—Access, Awareness, and Outreach

SEC. 201. ACCESS AND AWARENESS GRANTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') may award contracts or competitive grants to eligible entities to support demonstration projects designed to improve the health and health care of health disparity populations through improved access to health care, health care navigation assistance, and health literacy education.

(b) ELIGIBLE ENTITY DEFINED.—In this section the term ''eligible entity'' means—

(1) a hospital;

(2) an academic institution;

(3) a State health agency;

(4) an Indian Health Service hospital or clinic, Indian tribal health facility, or urban Indian facility;

(5) a nonprofit organization including a faith-based organization or consortia, to the extent that a grant awarded to such an entity is consistent with the requirements of section 1955 of the Public Health Service Act

(42 U.S.C. 300x–65) relating to grant award to nongovernmental entities;

(6) a primary care practice-based research network as defined by the Director of the Agency for Healthcare Research and Quality;

(7) a Federally qualified health center (as defined in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))); or

(9) any other entity determined to be appropriate by the Secretary.

(c) APPLICATION.—An eligible entity seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including assurances that the eligible entity will—

(1) target patient populations that are members of racial and ethnic minority groups or health disparity populations through specific outreach activities;

(2) coordinate with appropriate community organizations and include appropriate community participation in planning and implementation of activities;

(3) coordinate culturally competent and appropriate care;

(4) include a plan to ensure that the entity will become self-sustaining when funding under the grant terminates; and

(5) include quality and outcomes performance measures to evaluate the effectiveness of activities funded under this section to ensure that the activities are meeting their goals, and disseminate findings from such evaluations.

(d) PRIORITIES.—In awarding contracts and grants under this section, the Secretary shall give priority to applicants that intend to use amounts received under this section to carry out all programs specified under subsection (e).

(e) USE OF FUNDS.—An eligible entity shall use amounts received under this section to carry out programs that involve at least 2 of the following:

(1) Providing resources and guidance to individuals regarding sources of health insurance coverage, as well as information on how to obtain health coverage in the private insurance market, through Federal and State programs, and through other available coverage options.

(2) Providing patient navigator services to help individuals better utilize their health coverage by working through the health system to obtain appropriate quality care, including programs in which—

(A) trained individuals (such as representatives from the community, nurses, social workers, physicians, or patient advocates) are assigned to act as contacts—

(i) within the community; or

(ii) within the health care system, to facilitate access to health care services;

(B) partnerships are created with community organizations (which may include hospitals, federally qualified health centers or health center networks, faith-based organizations, primary care providers, home care, nonprofit organizations, health plans, or other health providers determined appropriate by the Secretary) to help facilitate access or to improve the quality of care;

(C) activities are conducted to coordinate care and preventive services and referrals;

(D) services are provided for translation, interpretation, and other such linguistic services for patients with limited English proficiency; or

(E) an entity receiving a grant under this section negotiates on behalf of the patient with relevant entities, or provides referrals and guides the patient through the mediation or arbitration process, to resolve issues that impede access to care.

(3) Promoting broad health awareness and prevention efforts, including patient education and health literacy programs to help increase a patient's knowledge of how to best participate in such patient's and such patient's children's treatment decisions.

(4) Enhancing preventive services and coordinated, multidisciplinary disease management of chronic conditions, such as diabetes mellitus, HIV/AIDS, asthma, cancer, cardiovascular disease, and obesity.

(f) REPORT.—Not later than 3 years after the date an entity receives a grant under this section and annually thereafter, the entity shall provide to the Secretary a report containing the results of any evaluation conducted pursuant to subsection (c)(5).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2005 through 2009.

SEC. 202. INNOVATIVE OUTREACH PROGRAMS.

(a) GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT UNDER MEDICAID AND SCHIP.—Section 2104(e) of the Social Security Act (42 U.S.C. 1397dd(e)) is amended—

(1) by striking ''Amounts allotted'' and inserting the following:

''(1) IN GENERAL.—Subject to paragraph (2), amounts allotted''; and

(2) by adding at the end the following:

''(2) GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT EFFORTS.—

''(A) IN GENERAL.—Prior to September 30 of each fiscal year, beginning with fiscal year 2004, the Secretary shall reserve from any unexpended allotments made to States under subsection (b) or (c) (including any portion of such allotments that were redistributed under subsection (f) or (g)) for a fiscal year that would revert to the Treasury on October 1 of the succeeding fiscal year but for the application of this paragraph, the lesser of $50,000,000 or the total amount of such unexpended allotments for purposes of awarding grants under this paragraph for such succeeding fiscal year to States or national, local, and community-based public or nonprofit private organizations to conduct innovative outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this title and title XIX.

''(B) PRIORITY FOR GRANTS IN CERTAIN AREAS.—In making grants under subparagraph (A)(ii), the Secretary shall give priority to grant applicants that propose to target geographic areas—

''(i) with high rates of eligible but unenrolled children, including such children who reside in rural areas;

''(ii) with high rates of families for whom English is not their primary language; or

''(iii) with high rates of racial and ethnic minorities and health disparity populations.

''(C) APPLICATION.—An organization that desires to receive a grant under this paragraph shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include quality and outcomes performance measures to evaluate the effectiveness of activities funded by a grant under this paragraph to ensure that the activities are meeting their goals, and disseminate findings from such evaluations.''.

(b) DEMONSTRATIONS TO REDUCE HEALTH DISPARITIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, through contracts or grants to public and private entities, support demonstration programs for the purpose of conducting interventions among health disparity populations to—

(A) target, identify, and reduce or prevent behavioral risk factors that contribute to health disparities;

(B) promote translation, interpretation, and other such linguistic services for patients with limited English speaking proficiency;

(C) promote preventive services; or

(D) enhance coordinated, multidisciplinary disease management of chronic conditions, such as diabetes mellitus, HIV/AIDS, asthma, cancer, and obesity.

(2) APPLICATION.—An entity desiring a contract or grant under paragraph (1) shall submit an application to the Secretary of Health and Human Services in such form and manner, and containing such information, as the Secretary may require.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 2005 through 2009.

Subtitle B—Refundable Health Insurance Credit

SEC. 211. REFUNDABLE HEALTH INSURANCE COSTS CREDIT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. HEALTH INSURANCE COSTS FOR UNINSURED INDIVIDUALS.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the amount paid by the taxpayer during such taxable year for qualified health insurance for the taxpayer and the taxpayer's spouse and dependents.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—The amount allowed as a credit under subsection (a) to the taxpayer for the taxable year shall not exceed the lesser of—

''(A) the sum of the monthly limitations for coverage months during such taxable year for the individuals referred to in subsection (a) for whom the taxpayer paid during the taxable year any amount for coverage under qualified health insurance, or

''(B) 90 percent of the sum of the amounts paid by the taxpayer for qualified health insurance for each such individual for coverage months of the individual during the taxable year.

''(2) MONTHLY LIMITATION.—

''(A) IN GENERAL.—The monthly limitation for an individual for each coverage month of such individual during the taxable year is the amount equal to 1/12 of—

''(i) $1,000 if such individual is the taxpayer,

''(ii) $1,000 if—

''(I) such individual is the spouse of the taxpayer,

''(II) the taxpayer and such spouse are married as of the first day of such month, and

''(III) the taxpayer files a joint return for the taxable year, and

''(iii) $500 if such individual is an individual for whom a deduction under section 151(c) is allowable to the taxpayer for such taxable year.

''(B) LIMITATION TO 2 DEPENDENTS.—Not more than 2 individuals may be taken into account by the taxpayer under subparagraph (A)(iii).

''(C) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of a taxpayer—

''(i) who is married (within the meaning of section 7703) as of the close of the taxable year but does not file a joint return for such year, and

''(ii) who does not live apart from such taxpayer's spouse at all times during the taxable year,

the dollar limitation imposed under subparagraph (A)(iii) shall be divided equally between the taxpayer and the taxpayer's spouse unless they agree on a different division.

''(3) INCOME PHASEOUT OF CREDIT PERCENTAGE.—

''(A) PHASEOUT FOR SINGLE COVERAGE.—If a taxpayer with self-only coverage has modified adjusted gross income in excess of $15,000 for a taxable year, the 90 percent under paragraph (1)(B) shall be reduced (but not below zero) by—

''(i) 2 percentage points for each $250 of such income in excess of $15,000 but not in excess of $20,000, and

''(ii) 1.25 percentage points for each $250 of such income in excess of $20,000.

''(B) AMOUNT OF REDUCTION FOR FAMILY COVERAGE.—If a taxpayer with family coverage has modified adjusted gross income in excess of $25,000 for a taxable year, the 90 percent under paragraph (1)(B) shall be reduced (but not below zero) by—

''(i) in the case of family coverage covering only 1 adult, 1.5 percentage points for each $250 of such excess, and

''(ii) in the case of family coverage covering more than 1 adult, 0.643 percentage points for each $250 of such excess.

Any percentage resulting from a reduction under clause (ii) shall be rounded to the nearest one-tenth of a percent.

''(C) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

''(i) without regard to this section and sections 911, 931, and 933, and

''(ii) after application of sections 86, 135, 137, 219, 221, and 469.

''(c) COVERAGE MONTH.—For purposes of this section—

''(1) IN GENERAL.—The term 'coverage month' means, with respect to an individual, any month if—

''(A) as of the first day of such month such individual is covered by qualified health insurance, and

''(B) the premium for coverage under such insurance for such month is paid by the taxpayer.

''(2) EMPLOYER-SUBSIDIZED COVERAGE.—

''(A) IN GENERAL.—The term 'coverage month' shall not include any month for which such individual is eligible to participate in any subsidized health plan (within the meaning of section 162(l)(2)) maintained by any employer of the taxpayer or of the spouse of the taxpayer. A subsidized health plan shall not include a plan substantially all of the coverage of which is of excepted benefits described in section 9832(c).

''(B) PREMIUMS TO NONSUBSIDIZED PLANS.—If an employer of the taxpayer or the spouse of the taxpayer maintains a health plan which is not a subsidized health plan (as so defined) and which constitutes qualified health insurance, employee contributions to the plan shall be treated as amounts paid for qualified health insurance.

''(3) CAFETERIA PLAN AND FLEXIBLE SPENDING ACCOUNT BENEFICIARIES.—The term 'coverage month' shall not include any month during a taxable year if any amount is not includible in the gross income of the taxpayer for such year under section 106 with respect to—

''(A) a benefit chosen under a cafeteria plan (as defined in section 125(d)), or

''(B) a benefit provided under a flexible spending or similar arrangement.

''(4) MEDICARE, MEDICAID, AND SCHIP.—The term 'coverage month' shall not include any month with respect to an individual if, as of the first day of such month, such individual—

''(A) is entitled to any benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

''(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

''(5) CERTAIN OTHER COVERAGE.—The term 'coverage month' shall not include any month during a taxable year with respect to an individual if, at any time during such year, any benefit is provided to such individual under—

''(A) chapter 89 of title 5, United States Code,

''(B) chapter 55 of title 10, United States Code,

''(C) chapter 17 of title 38, United States Code, or

''(D) any medical care program under the Indian Health Care Improvement Act.

''(6) PRISONERS.—The term 'coverage month' shall not include any month with respect to an individual if, as of the first day of such month, such individual is imprisoned under Federal, State, or local authority.

''(7) INSUFFICIENT PRESENCE IN UNITED STATES.—The term 'coverage month' shall not include any month during a taxable year with respect to an individual if such individual is present in the United States on fewer than 183 days during such year (determined in accordance with section 7701(b)(7)).

''(d) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means health insurance coverage (as defined in section 9832(b)(1)) which—

''(A) is coverage described in paragraph (2), and

''(B) meets the requirements of paragraph (3).

''(2) ELIGIBLE COVERAGE.—Coverage described in this paragraph is the following:

''(A) Coverage under individual health insurance.

''(B) Coverage under a group health plan (as defined in section 5000 without regard to subsection (d)).

''(C) Coverage through a private sector health care coverage purchasing pool.

''(D) Coverage under a State high risk pool described in subparagraph (C) of section 35(e)(1).

''(E) Continuation coverage described in subparagraph (A) or (B) of section 35(a)(1).

''(F) Coverage under an eligible State buyin program.

''(3) REQUIREMENTS.—The requirements of this paragraph are as follows:

''(A) COST LIMITS.—Under the coverage, the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid (other than premiums) for covered benefits does not exceed—

''(i) $5,000 for self-only coverage, and

''(ii) twice the dollar amount in clause (i) for family coverage, or

''(B) MAXIMUM BENEFITS.—Under the coverage, the annual and lifetime maximum benefits are not less than $700,000.

''(4) ELIGIBLE STATE BUYIN PROGRAM.—For purposes of paragraph (2)(F)—

''(A) IN GENERAL.—The term 'eligible State buyin program' means a State program under which an individual not otherwise eligible for assistance under the State medicaid program under title XIX of the Social Security Act or the State children's health insurance program under title XXI of such Act is able to buy health insurance coverage through a purchasing arrangement entered into between the State and a private sector health care purchasing group or health plan for purposes of providing health insurance coverage to recipients of assistance under such program or for purposes of providing such coverage to State employees.

''(B) REQUIREMENTS.—Subparagraph (A) shall only apply to a State program if—

''(i) the program uses private sector health care purchasing groups or health plans, and

''(ii) the State maintains separate risk pools for participants under the State program.

''(e) ARCHER MSA CONTRIBUTIONS; HSA CONTRIBUTIONS.—If a deduction would be allowed under section 220 to the taxpayer for a payment for the taxable year to the Archer MSA of an individual or under section 223 to the taxpayer for a payment for the taxable year to the Health Savings Account of such individual, subsection (a) shall not apply to the taxpayer for any month during such taxable year for which the taxpayer, spouse, or dependent is an eligible individual for purposes of either such section.

''(f) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—In the case of any taxable year beginning after 2004, each dollar amount referred to in subsections (b)(2)(A) and (d)(3) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, except that '2003' shall be substituted for '1996' in subclause (II) thereof.

''(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.

''(g) SPECIAL RULES.—

''(1) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amount which would (but for this paragraph) be taken into account by the taxpayer under section 213 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

''(2) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.

''(3) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

''(4) COORDINATION WITH ADVANCE PAYMENT.—Rules similar to the rules of section 35(g)(1) shall apply to any credit to which this section applies.

''(5) COORDINATION WITH SECTION 35.—If a taxpayer is eligible for the credit allowed under this section and section 35 for any taxable year, the taxpayer shall elect which credit is to be allowed.

''(h) EXPENSES MUST BE SUBSTANTIATED.—A payment for insurance to which subsection (a) applies may be taken into account under this section only if the taxpayer substantiates such payment in such form as the Secretary may prescribe.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following:

''SEC. 6050U. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.

''(a) IN GENERAL.—Any person who, in connection with a trade or business conducted

by such person, receives payments during any calendar year from any individual for coverage of such individual or any other individual under creditable health insurance, shall make the return described in subsection (b) (at such time as the Secretary may by regulations prescribe) with respect to each individual from whom such payments were received.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of the individual from whom payments described in subsection (a) were received,

''(B) the name, address, and TIN of each individual who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage,

''(C) the aggregate amount of payments described in subsection (a), and

''(D) such other information as the Secretary may reasonably prescribe.

''(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term 'creditable health insurance' means qualified health insurance (as defined in section 36(d)).

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

''(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

''(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xii) through (xviii) as clauses (xiii) through (xix), respectively, and by inserting after clause (xi) the following:

''(xii) section 6050U (relating to returns relating to payments for qualified health insurance),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of subparagraph (AA), by striking the period at the end of the subparagraph (BB) and inserting '', or'', and by adding at the end the following:

''(CC) section 6050U(d) (relating to returns relating to payments for qualified health insurance).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050T the following:

''Sec. 6050U. Returns relating to payments for qualified health insurance.''.

(c) CRIMINAL PENALTY FOR FRAUD.—Subchapter B of chapter 75 of the Internal Revenue Code of 1986 (relating to other offenses) is amended by adding at the end the following:

''SEC. 7276. PENALTIES FOR OFFENSES RELATING TO HEALTH INSURANCE TAX CREDIT.

''Any person who knowingly misuses Department of the Treasury names, symbols, titles, or initials to convey the false impression of association with, or approval or endorsement by, the Department of the Treasury of any insurance products or group health coverage in connection with the credit for health insurance costs under section 36 shall on conviction thereof be fined not more than $10,000, or imprisoned not more than 1 year, or both.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 162(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) ELECTION TO HAVE SUBSECTION APPLY.—No deduction shall be allowed under paragraph (1) for a taxable year unless the taxpayer elects to have this subsection apply for such year.''.

(2) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following:

''Sec. 36. Health insurance costs for uninsured individuals.

''Sec. 37. Overpayments of tax.''

(4) The table of sections for subchapter B of chapter 75 of such Code is amended by adding at the end the following:

''Sec. 7276. Penalties for offenses relating to health insurance tax credit.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

(2) PENALTIES.—The amendments made by subsections (c) and (d)(4) shall take effect on the date of the enactment of this Act.

SEC. 212. ADVANCE PAYMENT OF CREDIT TO ISSUERS OF QUALIFIED HEALTH INSURANCE.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following:

''SEC. 7529. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

''(a) GENERAL RULE.—Not later than January 1, 2005, the Secretary shall establish a program for making payments on behalf of certified individuals to providers of qualified health insurance (as defined in section 36(d)) for such individuals.

''(b) PROGRAM OPTIONS.—The program under subsection (a) may—

''(1) provide that payments may be made on the basis of modified adjusted gross income of certified individuals for the preceding taxable year, and

''(2) provide that, in lieu of payments to providers, the following amounts may be offset:

''(A) Amounts required to be deposited by the provider as estimated income tax under section 6654 or 6655.

''(B) Amounts required to be deducted and withheld under section 3401 (relating to wage withholding).

''(C) Taxes imposed under section 3111(a) or 50 percent of taxes imposed under section 1401(a) (relating to FICA employer taxes).

''(D) Amounts required to be deducted under section 3102 with respect to taxes imposed under section 3101(a) or 50 percent of taxes imposed under section 1401(a) (relating to FICA employee taxes).

''(c) CERTIFIED INDIVIDUAL.—For purposes of this section, the term 'certified individual' means any individual for whom a qualified health insurance credit eligibility certificate is in effect.

''(d) QUALIFIED HEALTH INSURANCE CREDIT ELIGIBILITY CERTIFICATE.—For purposes of this section, a qualified health insurance credit eligibility certificate is a statement furnished by an individual to a provider of qualified health insurance which—

''(1) certifies that the individual will be eligible to receive the credit provided by section 36 for the taxable year,

''(2) estimates the amount of such credit for such taxable year, and

''(3) provides such other information as the Secretary may require for purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 7529. Advance payment of health insurance credit for purchasers of qualified health insurance.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2005, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

TITLE III—STRONG NATIONAL LEADERSHIP, COOPERATION, AND COORDINATION

SEC. 301. OFFICE OF MINORITY HEALTH AND HEALTH DISPARITIES.

(a) IN GENERAL.—Section 1707 of the Public Health Service Act (42 U.S.C. 300u–6) is amended—

(1) by striking the section heading and inserting the following:

''OFFICE OF MINORITY HEALTH AND HEALTH DISPARITIES''; and

(2) in subsection (a)—

(A) by striking ''Office of Minority Health'' each place that such appears and inserting ''Office of Minority Health and Health Disparities''; and

(B) by striking ''for Minority Health'' and inserting ''for Minority Health and Health Disparities''.

(b) DUTIES.—Section 1707(b) of the Public Health Service Act (42 U.S.C. 300u–6(b)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by inserting ''and health disparity populations'' after ''groups'' and

(B) by striking ''for Minority Health'' and inserting ''for Minority Health and Health Disparities'';

(2) in paragraph (1)—

(A) by striking ''Establish'' and all that follows through ''coordinate'' and inserting ''Coordinate''; and

(B) by striking ''such individuals'' and inserting ''health disparities'';

(4) in paragraph (1)

(3) in paragraph (5), by inserting ''or health disparity populations'' after ''minority groups'';

(4) in paragraph (6), by inserting ''or health disparity population'' after ''minority group'';

(5) by striking paragraphs (7) and (9);

(6) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (8), and (10) as paragraphs (3), (4), (6), (7), (9), (10), (11), and (12), respectively;

(7) by inserting before paragraph (3) (as so redesignated) the following:

''(1) Establish specific short- and long-term goals and objectives for analyzing the causes of health disparities and addressing them, with a particular focus on the areas of health promotion, disease prevention, chronic care and research.

''(2) Work with agencies within the Department of Health and Human Services and with the Surgeon General to establish a strategic plan to analyze and address the causes of health disparities. The plan shall include recommendations to improve the collection, analysis, and reporting of data at the Federal, State, territorial, Tribal, and local levels, including how to—

''(A) implement data collection while minimizing the cost and administrative burdens of data collection and reporting;

''(B) expand awareness of the importance of such data collection to improving health care quality; and

''(C) provide researchers with greater access to racial, ethnic, and other health disparity data.'';

(8) by inserting after paragraph (4) (as so redesignated), the following:

''(5) Increase awareness of disparities in health care among health care providers, health plans, and the public.'';

(9) in paragraph (6) (as so redesignated)—

(A) by striking ''Support'' and inserting ''In cooperation with the appropriate agencies, support'';

(B) by inserting before the period the following: ''for—

''(A) expanding health care access;

''(B) improving health care quality; and

''(C) increasing health care educational opportunity.'';

(10) by inserting after paragraph (7) (as so redesignated), the following:

''(8) Consistent with section 102 of the Closing the Health Care Gap Act of 2004, coordinate the classification and collection of health care data to allow for the ongoing analysis of the causes of disparities and monitoring of progress toward the elimination of disparities.''; and

(11) by inserting after paragraph (12), as so redesignated, the following:

''(13) Work with Federal agencies and departments outside of the Department of Health and Human Services to maximize program resources available to understand why disparities exist, and effective ways to reduce and eliminate disparities.

''(14) Support a center for linguistic and cultural competence to carry out the following:

''(A) With respect to individuals who lack proficiency in speaking the English language, enter into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of such individuals to such services by developing and carrying out programs to provide bilingual or interpretive services.

''(B) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under this subparagraph shall include developing and evaluating model projects.''.

(c) ADVISORY COMMITTEE.—Section 1707(c) of the Public Health Service Act (42 U.S.C. 300u–6(c)) is amended—

(1) in paragraph (1), by inserting ''and Health Disparities'' after ''Minority Health'';

(2) in paragraph (2), by inserting ''and health disparity populations'' after ''minority group''; and

(3) in paragraph (4)(B)—

(A) by inserting ''and health disparities'' after ''minority health''; and

(B) by inserting ''and health disparity populations'' after ''minority groups''.

(d) DUTY REQUIREMENTS.—Section 1707(d) of the Public Health Service Act (42 U.S.C. 300u–6(d)) is amended—

(1) in paragraph (1)(A), by striking ''(b)(9)'' and inserting ''(b)(14);

(2) in paragraph (1)(B), by striking ''(b)(10)'' and inserting ''(b)(13); and

(3) in paragraph (3), insert ''take into account the unique cultural or linguistic issues facing such populations and'' after ''subsection (b)''.

(e) REPORTS.—Section 1707(f) of the Public Health Service Act (42 U.S.C. 300u–6(f)) is amended—

(1) in paragraph (1)—

(A) by striking the subsection heading and inserting ''REPORT ON ACTIVITIES.—'';

(B) by striking ''1999'' and inserting ''2006'';

(C) by striking ''Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate'' and inserting ''appropriate committees of Congress''; and

(D) by inserting ''and health disparity populations'' after ''racial and ethnic minority groups'';

(2) in paragraph (2)—

(A) by striking ''1999'' and inserting ''2005''; and

(B) by inserting ''and health disparity'' after ''minority health'';

(3) by redesignating paragraph (1) and (2) as paragraphs (2) and (3), respectively; and

(4) by inserting after the subsection heading, the following:

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Closing the Health Care Gap Act of 2004, the Secretary shall submit to the appropriate committees of Congress, a report on the plan developed under subsection (b)(2).''.

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 1707(h) of the Public Health Service Act (42 U.S.C. 300u–6(h)) is amended—

(1) by striking ''FUNDING.—'' and all that follows through the paragraph designation in paragraph (1); and

(2) by striking ''$30,000,000'' and all that follows through the period and inserting ''$50,000,000 for fiscal year 2005, such sums as may be necessary for each of fiscal years 2006 through 2009.''.

TITLE IV—PROFESSIONAL EDUCATION, AWARENESS, AND TRAINING

SEC. 401. WORKFORCE DIVERSITY AND TRAINING.

(a) PURPOSE.—Part B of title VII of the Public Health Service Act (42 U.S.C. 293 et seq.) is amended by inserting before section 736 the following:

''SEC. 736A. PURPOSE OF PROGRAM.

''It is the purpose of this part to improve health care quality and access in medically underserved communities, to improve the cultural competence of health care providers by increasing minority representation in the health professions, and to strengthen the research and education programs of designated health professions schools that disproportionately serve health disparity populations.''.

(b) CENTERS OF EXCELLENCE.—Section 736 of the Public Health Service Act (42 U.S.C. 293) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—The Secretary shall make grants to, and enter into contracts with, public and nonprofit private health or educational entities, including designated health professions schools described in subsection (c), for the purpose of assisting the schools in supporting programs of excellence in health professions education for racial or ethnic minority or health disparity populations.'';

(2) in subsection (b)—

(A) in paragraph (2), by striking ''underrepresented minority'' and inserting ''racial or ethnic minority'';

(B) in paragraph (3), by striking ''underrepresented minority'' and inserting ''racial or ethnic minority'';

(C) in paragraph (4), by striking ''minority health'' and inserting ''health disparity'';

(D) in paragraph (5), by striking ''underrepresented minority groups'' and inserting ''racial or ethnic minorities and health disparity populations'';

(E) in paragraph (6)—

(i) in the matter preceding subparagraph (A), by striking ''under-represented minority'' and inserting ''individuals from racial or ethnic minorities or health disparity populations''; and

(ii) by striking ''and'' at the end;

(F) in paragraph (7), by striking the period and inserting ''; and''; and

(G) by adding at the end the following:

''(8) to conduct accountability and other reporting activities, as required by the Secretary.'';

(3) in subsection (c)—

(A) in paragraph (1)(B)—

(i) in clause (i), by striking ''under-represented minority'' and inserting ''individuals from racial or ethnic minorities or health disparity populations'';

(ii) in clause (ii), by striking ''under-represented minority'' and inserting ''such'';

(iii) in clause (iii)—

(I) by striking ''under-represented minority individuals'' the first place that such appears and inserting ''such students'';

(II) by striking ''such individuals'' and inserting ''such students'';and

(III) by striking ''under-represented minority'' the second place that such appears and inserting ''such''; and

(iv) in clause (iv), by striking ''under-represented minority individuals'' and inserting ''individuals from racial or ethnic minorities or health disparity populations''; and

(B) in paragraph (2)(B)—

(i) in clause (i), by striking ''under-represented'' and inserting ''racial or''; and

(C) in paragraph (5)(B)—

(i) by striking ''under-represented'' and inserting ''racial or''; and

(ii) by inserting ''or a health disparity population'' after ''minorities'';

(4) in subsection (d)(1), by striking ''Under-Represented Minority Health'' and inserting ''Minority Health and Health Disparity'';

(5) in subsection (h)—

(A) in paragraph (1), by striking ''$26,000,000'' and all that follows and inserting ''$50,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009''; and

(B) in paragraph (2)—

(i) in subparagraph (C)—

(I) in the matter preceding clause (i), by striking ''are $30,000,000 or more'' and inserting ''exceed $30,000,000 but are less than $40,000,000''; and

(II) in clause (iv), by striking ''any remaining funds'' and inserting ''any remaining excess amount''; and

(ii) by adding at the end the following:

''(D) FUNDING IN EXCESS OF $40,000,000.—If amounts appropriated under paragraph (1) for a fiscal year are $40,000,000 or more, the Secretary shall make available—

''(i) not less than $16,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(2)(A);

''(ii) not less than $16,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in

paragraph (3) or (4) of subsection (c) (including meeting conditions pursuant to subsection (e));

''(iii) not less than $8,000,000 for grants under subsection (a) to health professions schools that meet the conditions described in subsection (c)(5); and

''(iv) after grants are made with funds under clauses (i) through (iii), any remaining funds for grants under subsection (a) to health professions schools that meet the conditions described in paragraph (2)(A), (3), (4), or (5) of subsection (c).''; and

(6) by adding at the end the following:

''(i) EVALUATION.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Closing the Health Care Gap Act of 2004, the Secretary shall request that the Institute of Medicine evaluate the effectiveness of the programs under this section in meeting the purpose of this part. The Institute of Medicine shall submit a report on the evaluation to the Secretary.

''(2) WORKING GROUP.—Upon submission of the report under paragraph (1), the Secretary shall convene a working group composed of stakeholders, including designated health professions schools described in subsection (c), to define quality performance measures and reporting requirements of grant recipients that shall be tied to the purpose of this part.

''(3) REGULATIONS.—Not later than 18 months after the date the Institute of Medicine submits the report under paragraph (1), the Secretary shall publish proposed regulations regarding the quality performance measures and reporting requirements described in paragraph (2). Not later than 3 years after the date the Institute of Medicine submits the report under paragraph (1), the Secretary shall publish final regulations regarding the quality performance measures and reporting requirements described in paragraph (2).''.

(c) SCHOLARSHIPS FOR DISADVANTAGED STUDENTS.—Section 737 of the Public Health Service Act (42 U.S.C. 293a) is amended—

(1) in subsection (c), by striking ''underrepresented minority'' and inserting ''minority and health disparity''; and

(2) in subsection (d)(1)(B), by inserting ''or health disparity'' after ''minority''.

(d) LOAN REPAYMENTS AND FELLOWSHIPS REGARDING FACULTY POSITIONS.—Section 738(b) of the Public Health Service Act (42 U.S.C. 293b(b)) is amended—

(1) in paragraph (1), by striking ''underrepresented'';

(2) in paragraph (3)(A), by striking ''underrepresented minority individuals'' and inserting ''individuals from racial or ethnic minorities or health disparity populations''; and

(3) by striking paragraph (5).

(e) NATIONAL HEALTH SERVICE CORPS.—

(1) ASSIGNMENT.—Section 333(a)(3) of the Public Health Service Act (42 U.S.C. 254f(a)(3)) is amended—

(A) in the second sentence—

(i) by striking ''shall give preference'' and inserting the following: ''shall—

''(A) give preference''; and

(ii) by striking the period and inserting ''; and''; and

(B) by adding at the end the following:

''(B) give preference to applications from entities described in subparagraph (A) that serve individuals a majority of whom are members of a racial or ethnic minority or other health disparity population with annual incomes at or below twice those set forth in the most recent poverty guidelines issued by the Secretary pursuant to section 402(2) of the Community Services Block Grant Act.''.

(2) PRIORITIES.—Section 333A(a) of the Public Health Service Act (42 U.S.C. 254f-1(a)) is amended—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively; and

(B) by inserting before paragraph (2) (as so redesignated), the following:

''(1) give preference to applications as described in section 333(a)(3);''.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 740 of the Public Health Service Act (42 U.S.C. 293d) is amended—

(1) in subsection (a), by striking ''2002'' and inserting ''2009'';

(2) in subsection (b), by striking ''2002'' and inserting ''2009'';

(3) in subsection (c), by striking ''2002'' and inserting ''2009''; and

(4) by striking subsection (d).

(f) GRANTS FOR HEALTH PROFESSIONS EDUCATION.—Section 741 of the Public Health Service Act (42 U.S.C. 293e) is amended—

(1) in subsection (a)(2), in the first sentence by striking ''Unless'' and all that follows through ''the Secretary'' and inserting ''The Secretary''; and

(2) in subsection (b), by striking ''$3,500,000'' and all that follows through the period and inserting ''such sums as may be necessary for each of fiscal years 2005 through 2009.''.

(g) HEALTH CAREERS OPPORTUNITY PROGRAM.—Subpart 2 of part E of title VII of the Public Health Service Act (42 U.S.C. 295 et seq.) is amended—

(1) in section 770 by inserting ''(other than section 771)'' after ''this subpart'';

(2) by redesignating section 770 as section 771;

(3) by inserting after section 769 the following:

''SEC. 770. HEALTH CAREERS OPPORTUNITY PROGRAM.

''(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements and contracts with eligible entities for any of the following purposes:

''(1) Identifying and recruiting students who—

''(A) are from disadvantaged backgrounds or health disparity populations; and

''(B) are interested in a career in the health professions.

''(2) Providing counseling or other services designed to assist such individuals in entering a health professions school and successfully completing their education at such a school.

''(3) Providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist the individuals in successfully completing such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education.

''(b) RECEIPT OF AWARD.—

''(1) ELIGIBLE ENTITIES; REQUIREMENT OF CONSORTIUM.—The Secretary may make an award under subsection (a) only if an eligible entity meets the following conditions:

''(A) The eligible entity is a public or private entity, and such entity has established a consortium consisting of private community-based organizations and health professions schools.

''(B) The health professions schools in the consortium are schools of medicine or osteopathic medicine, public health, nursing, dentistry, optometry, pharmacy, allied health, or podiatric medicine, or graduate programs in mental health practice (including programs in clinical psychology).

''(C)(i) Except as provided in clause (ii), the membership of the consortium includes not less than 1 nonprofit private community-based organization and not less than 3 health professions schools.

''(ii) In the case of an eligible entity whose exclusive activity under the award will be carrying out 1 or more programs described in subsection (a)(5), the membership of the consortium includes not less than 1 nonprofit private community-based organization and not less than 1 health professions school.

''(D) The members of the consortium have entered into an agreement specifying—

''(i) that each of the members will comply with the conditions upon which the award is made; and

''(ii) whether and to what extent the award will be allocated among the members.

''(2) REQUIREMENT OF COMPETITIVE AWARDS.—Awards under subsection (a) shall be made on a competitive basis.

''(c) REQUIREMENTS.—The Secretary may make an award under subsection (a) only if the Secretary determines that, in the case of activities carried out under the award that prove to be effective toward achieving the purposes of the activities—

''(1) the members of the consortium involved have or will have the financial capacity to continue the activities, regardless of whether financial assistance under subsection (a) continues to be available; and

''(2) the members of the consortium demonstrate to the satisfaction of the Secretary a commitment to continue such activities, regardless of whether such assistance continues to be available.

''(d) OBJECTIVES UNDER AWARDS.—Before making a first award to an eligible entity under subsection (a), the Secretary shall establish objectives regarding the activities to be carried out under the award, which objectives are applicable until the next fiscal year for which such award is made after a competitive process of review. In making an award after such a review, the Secretary shall establish additional objectives for the applicant.

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated, such sums as may be necessary for each of fiscal years 2005 through 2009.''.

SEC. 402. HIGHER EDUCATION TECHNICAL AMENDMENTS.

Section 326(c) of the Higher Education Act of 1965 (20 U.S.C. 1063b(c)) is amended—

(1) in paragraph (2), by inserting before the semicolon, the following: '', and for the acquisition and development of real property that is adjacent to the campus to improve the academic environment'';

(2) in paragraph (6), by striking ''and'' at the end;

(3) in paragraph (7), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

''(8) Support of faculty exchanges, development, and fellowship to enable attainment of advanced degrees in their field of instruction; and

''(9) Tutoring, counseling, and student service programs designed to improve academic success.''.

SEC. 403. MODEL CULTURAL COMPETENCY CURRICULUM DEVELOPMENT.

(a) CURRICULA DEVELOPMENT AND MODEL CURRICULA.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') may award grants to eligible entities for curricula development for the training of health care providers and health professions students regarding cultural competency, and for demonstration projects to test new innovations for cultural competence education model curricula for and identify additional barriers to culturally appropriate care.

(b) APPLICATION.—Each eligible entity desiring a grant under subsection (a) shall submit an application to the Secretary at such

time, in such manner, and containing such information as the Secretary may require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2005 through 2009.

SEC. 404. INTERNET CULTURAL COMPETENCY CLEARINGHOUSE.

(a) DEVELOPMENT.—The Director of the Office of Minority Health and Health Disparities, with assistance from the Administrator of the Agency for Healthcare Research and Quality, shall develop and maintain an Internet clearinghouse to improve health care quality for individuals with specific cultural needs or with limited English proficiency or low functional health literacy and to reduce or eliminate the duplication of effort to translate materials.

(b) TEMPLATES.—In developing the clearinghouse under subsection (a), the Director of the Office of Minority Health and Health Disparities shall develop, test, and make available templates for standard documents that are necessary for patients and consumers to access and make educated decisions about their health care, including—

(1) administrative and legal documents;

(2) clinical information such as how to take medications, how to prevent transmission of a contagious disease, and other prevention and treatment instructions; and

(3) patient education and outreach materials such as immunization notices, health warnings, or screening notices.

(c) ONLINE LIBRARY OR DATABASE.—The Director of the Office of Minority Health and Health Disparities shall develop a readily accessible online library or database with searchable clinically relevant cultural information that is important for health care providers to have on hand in the direct provision of medical care to individuals from specific minority, ethnic, or other health disparity groups.

TITLE V—ENHANCED RESEARCH

SEC. 501. AGENCY FOR HEALTHCARE RESEARCH AND QUALITY.

Part B of title IX of the Public Health Service Act (42 U.S.C. 299b) is amended by adding at the end the following:

''SEC. 918. ENHANCED RESEARCH WITH RESPECT TO HEALTH DISPARITIES.

''(a) ACCELERATING THE ELIMINATION OF DISPARITIES.—

''(1) IN GENERAL.—The Secretary, acting through the Director, may award grants or contracts to eligible entities (as defined in paragraph (4)) for short-term research to analyze the causes of disparities and identify or develop and evaluate effective strategies in closing the health care gap between minority and health disparity populations and nonminority populations or non-health disparity populations.

''(2) PROMPT USE OF RESEARCH.—To ensure that research described in paragraph (1) is effective and is disseminated and applied promptly, the Director shall—

''(A) expand practice-based research networks (primary care and larger delivery systems) to include networks of delivery sites serving large numbers of minority and health disparity populations including—

''(i) public hospitals;

''(ii) health centers; and

''(iii) other sites as determined appropriate by the Director;

''(B) work with health care providers to identify and develop those interventions for minority and health disparity populations for which effective implementation strategies are not clear; and

''(C) develop a broad virtual network of continuous learning among health care providers (including institutions that did not receive a grant or contract under paragraph (1)) so that those participating in research can share findings and experience throughout the duration of such research and to facilitate interest in and prompt adoption of such findings and experience.

''(3) TECHNICAL ASSISTANCE.—The Director of the Agency for Healthcare Research and Quality shall provide technical assistance to assist in the implementation of strategies of evidence-based practices that will reduce health care disparities.

''(4) ELIGIBLE ENTITIES.—In paragraph (1), the term 'eligible entities' means institutions with researchers who have experience in conducting research relating to minority health and health disparity populations.

''(5) PUBLIC HOSPITALS.—In this subsection, the term 'public hospitals' means a hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) that—

''(A) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital that has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act or eligible for assistance under the State plan under title XIX of the Social Security Act; and

''(B) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent or was described in section 1886(d)(5)F)(i)(II) of such Act.

''(b) REALIZING THE POTENTIAL OF DISEASE MANAGEMENT.—

''(1) PUBLIC-PRIVATE SECTOR PARTNERSHIP TO ASSESS EFFECTIVENESS OF EXISTING DATA MANAGEMENT STRATEGIES.—The Director shall establish a public-private partnership to assess the effectiveness of disease management strategies and identify effective interventions and support strategies with respect to minority and health disparity populations.

''(2) EFFECTIVE MANAGEMENT OF PATIENTS WITH MULTIPLE CHRONIC DISEASES.—

''(A) INITIATIVE FOR DISEASE MANAGEMENT STRATEGIES.—The Director shall coordinate an initiative to identify those chronic conditions for which disease-specific disease management strategies pose conflicts in preferred clinical interventions.

''(B) RESEARCH.—The Director, with support from other agencies within the Department of Health and Human Services shall conduct a program of research based in community and primary-care settings to test and evaluate the implications for patient outcomes of alternative approaches for reconciling conflicts from disease-specific disease management initiatives.

''(c) DEVELOPMENT OF EFFECTIVE MEASUREMENT OF DISPARITIES.—

''(1) IN GENERAL.—The Director shall conduct a demonstration project to—

''(A) assess alternative strategies for identifying population subgroups at highest risk of poor quality and poor health;

''(B) improve data collection for health care priority populations (as described in section 901(c)(1)(B));

''(C) improve the ability to identify the causes of disparities; and

''(D) track progress in reducing health care disparities with a focus on—

''(i) the minimum data set necessary to track such progress; and

''(ii) the identification of measures for which data currently being collected are insufficient.

''(2) REPORT.—Not later than 3 years after the date the demonstration project described in paragraph (1) receives funding, the Director shall submit to the appropriate committees of Congress a report containing the findings of the demonstration project together with any policy recommendations.

''(d) ANALYSIS OF RACIAL, ETHNIC, AND OTHER HEALTH DISPARITY DATA.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, and in coordination with the Administrator of the Centers for Medicare & Medicaid Services and the Director of the Centers for Disease Control and Prevention, shall provide technical assistance to agencies of the Department of Health and Human Services in meeting Federal standards for race, ethnicity, and other health disparity data collection and analysis of racial, ethnic, and other disparities in health and health care in Federally-administered programs by—

''(1) identifying appropriate quality assurance mechanisms to monitor for health disparities;

''(2) specifying the clinical, diagnostic, or therapeutic measures which should be monitored;

''(3) developing new quality measures relating to racial, ethnic, or other health disparities;

''(4) identifying the level at which data analysis should be conducted; and

''(5) sharing data with external organizations for research and quality improvement purposes.''.

SEC. 502. NATIONAL INSTITUTES OF HEALTH.

The Director of the National Institutes of Health, in consultation with the Director of the National Center on Minority Health and Health Disparities, shall expand and intensify research at the National Institutes of Health relating to the sources of health and health care disparities, and increase efforts to recruit minority scientists and research professionals into the field of health disparity research.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. DEFINITIONS.

(a) IN GENERAL.—In this Act, including the amendments made by this Act:

(1) CULTURALLY COMPETENT.—

(A) IN GENERAL.—The term ''culturally competent'', with respect to the manner in which health-related services, education, and training are provided, means providing the services, education, and training in the language and cultural context that is most appropriate for the individuals for whom the services, education, and training are intended, including as necessary the provision of bilingual services.

(B) MODIFICATION.—The definition established in subparagraph (A) may be modified as needed at the discretion of the Secretary after providing a 30-day notice to Congress.

(2) MINORITY HEALTH CONDITIONS.—The term ''minority health conditions'', with respect to individuals who are members of minority groups, means all diseases, disorders, and conditions (including with respect to mental health and substance abuse)—

(A) unique to, more serious, or more prevalent in such groups;

(B) for which the factors of medical risk or types of medical intervention may be different for such groups, or for which it is unknown whether such factors or types are different for such individuals; or

(C) with respect to which there has been insufficient research involving such individual members of such groups as subjects or insufficient data on such individuals.

(3) MINORITY HEALTH DISPARITIES RESEARCH.—The term ''minority health disparities research'' means basic, clinical, behavioral and health services research on minority health conditions (as defined in paragraph (2)), including research to prevent, diagnose, and treat such conditions.

(4) MINORITY.—The terms ''minority'' and ''minorities'' refer to individuals from a minority group.

(5) MINORITY GROUP.—The term ''minority group'' has the meaning given the term ''racial and ethnic minority group'' in section 1707 of the Public Health Service Act (42 U.S.C. 300u-6).

(b) HEALTH DISPARITY POPULATIONS.—In this Act, including the amendments made by this Act:

(1) HEALTH DISPARITY POPULATION.—The term ''health disparity population'' has the meaning given such term in section 903(d)(1) of the Public Health Service Act (42 U.S.C. 299a-1(d)(1)).

(2) HEALTH DISPARITIES RESEARCH.—The term ''health disparities research'' shall include basic, clinical, behavioral, and health services research on health disparity populations (including individual members and communities of such populations) that relates to health disparities as defined under paragraph (1), including the causes of such disparities and methods to prevent, diagnose, and treat such disparities.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 321—RECOGNIZING THE LOYAL SERVICE AND OUTSTANDING CONTRIBUTIONS OF J. ROBERT OPPENHEIMER TO THE UNITED STATES AND CALLING ON THE SECRETARY OF ENERGY TO OBSERVE THE 100TH ANNIVERSARY OF DR. OPPENHEIMER'S BIRTH WITH APPROPRIATE PROGRAMS AT THE DEPARTMENT OF ENERGY AND THE LOS ALAMOS NATIONAL LABORATORY

Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 321

Whereas, from March 1943 to October 1945, J. Robert Oppenheimer was the first director of the Los Alamos Laboratory, New Mexico, which was used to design and build the nuclear weapons that ended the Second World War;

Whereas, following the end of the Second World War, Dr. Oppenheimer served as a science adviser and consultant to each of the 3 principal committees planning for the postwar control of nuclear energy, including the Secretary of War's Interim Committee on Atomic Energy, the Secretary of State's Committee on Atomic Energy, and the United Nations Atomic Energy Committee;

Whereas, from 1947 to 1952, Dr. Oppenheimer was the first chairman of the General Advisory Committee, which advised the Atomic Energy Commission on scientific and technical matters;

Whereas, from 1947 to 1954, Dr. Oppenheimer also served on defense policy committees, including the Committee on Atomic Energy of the Joint Research and Development Board, the Science Advisory Committee of the Office of Defense Mobilization, and the Panel on Disarmament of the Department of State;

Whereas, in addition to his service to the United States Government, Dr. Oppenheimer was the director of the Institute for Advanced Study at Princeton University from 1947 to 1965;

Whereas, in 1946, President Truman conferred on Dr. Oppenheimer the Medal for Merit ''for exceptionally meritorious conduct in the performance of outstanding service'' as director of the Los Alamos Laboratory and for development of the atomic bomb;

Whereas, in 1963, President Lyndon Johnson conferred on Dr. Oppenheimer the Enrico Fermi Award ''for contributions to theoretical physics as a teacher and originator of ideas and for leadership of the Los Alamos Laboratory and the atomic energy program during critical years''; and

Whereas April 22, 2004, is the 100th anniversary of Dr. Oppenheimer's birth: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the loyal service of J. Robert Oppenheimer to the United States and the outstanding contributions he made to theoretical physics, the Los Alamos National Laboratory, the development of nuclear energy, and the common defense and security of the United States; and

(2) calls on the Secretary of Energy to observe the 100th anniversary of the birth of J. Robert Oppenheimer with appropriate ceremonies, activities, or programs at the Department of Energy and the Los Alamos National Laboratory.

SENATE RESOLUTION 320—DESIGNATING THE WEEK OF MARCH 7 THROUGH MARCH 13, 2004, AS ''NATIONAL PATIENT SAFETY AWARENESS WEEK''

Mr. GRAHAM of Florida (for himself, Ms. SNOWE, Mr. GREGG, Mr. DODD, Mr. JEFFORDS, Mr. BREAUX, Mr. FRIST, and Mr. ENZI) submitted the following resolution; which was considered and agreed to:

S. RES. 320

Whereas patient safety is an issue of significant importance to the United States;

Whereas 1 in every 5 citizens of the United States has experienced a medical error or has a family member who has experienced a medical error;

Whereas medical errors often have serious and profound consequences;

Whereas it is estimated that injuries from preventable medical errors cost the United States economy between $17,000,000,000 and $29,000,000,000 each year;

Whereas more people die annually from medical errors than from automobile accidents, breast cancer, and AIDS;

Whereas increased patient and provider education and collaboration can help avoid medical errors;

Whereas the Institute of Medicine has stated that a ''critical component of a comprehensive strategy to improve patient safety is to create an environment that encourages organizations to identify errors, evaluate causes and take appropriate actions to improve performance in the future,'' and further, that ''a more conducive environment is needed to encourage health care professionals and organizations to identify, analyze, and report errors without threat of litigation and without compromising patients' legal rights'';

Whereas better systems can be implemented to reduce the factors that lead to medical errors;

Whereas innovative educational and research programs are being conducted by the National Patient Safety Foundation as well as by other public and private entities to develop methods for avoiding preventable injuries and to assess the effectiveness of new techniques to increase patient safety; and

Whereas education of the public on medical errors and the factors that typically lead to medical errors empowers patients to be more effective partners with health care providers in the battle against preventable injuries from medical errors: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of March 7 through March 13, 2004, as ''National Patient Safety Awareness Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate programs and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2856. Mr. FRIST (for Mrs. HUTCHISON) proposed an amendment to the bill H.R. 254, to authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes.

SA 2857. Mr. FRIST (for Mr. EDWARDS (for himself and Mrs. DOLE)) proposed an amendment to the resolution S. Res. 307, honoring the county of Cumberland, North Carolina, its municipalities and community partners as they celebrate the 250th year of the existence of Cumberland County.

SA 2858. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1997, to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes; which was ordered to lie on the table.

SA 2859. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 1997, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2856. Mr. FRIST (for Mrs. HUTCHISON) proposed an amendment to the bill H.R. 254, to authorize the President of the United States to agree to certain amendment to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION. 1. AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT; GRANT AUTHORITY.

(a) AMENDMENT AUTHORITY.—Part 2 of subtitle D of title V of Public Law 103–182 (22 U.S.C. 290m–290m-3) is amended by adding at the end the following:

''SEC. 545. AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT.

''The President may agree to amendments to the Cooperation Agreement that—