National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable housing for low-income families, and for other purposes.

S. 1491

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 1491, a bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

At the request of Mr. DAYTON, his name was added as a cosponsor of S. 1491, supra.

S. 1703

At the request of Mr. SMITH, the name of the Senator from Missouri (Mr. TALENT) 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. 1762

At the request of Mr. CRAPO, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1762, a bill to amend title II of the Social Security Act to eliminate the five-month waiting period in the disability insurance program, and for other purposes.

S. 2104

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 2104, a bill to designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building''.

S. 2154

At the request of Mr. DORGAN, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Indiana (Mr. LUGAR) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2154, a bill to establish a National sex offender registration database, and for other purposes.

S. 2260

At the request of Mr. SANTORUM, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 2260, a bill to amend title XVIII of the Social Security Act to provide for fairness in the calculation of medicare disproportionate share hospital payments for hospitals in Puerto Rico.

S. 2265

At the request of Mr. ROBERTS, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2265, a bill to require group and individual health plans to provide coverage for colorectal cancer screenings.

S. 2336

At the request of Mr. REID, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2336, a bill to expand access to preventive health care services and education programs that help reduce unintended pregnancy, reduce infection with sexually transmitted disease, and reduce the number of abortions.

S. 2353

At the request of Mr. CRAIG, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2353, a bill to reauthorize and amend the National Geologic Mapping Act of 1992.

S. 2363

At the request of Mr. LEAHY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2373

At the request of Mr. DOMENICI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2373, a bill to modify the prohibition on recognition by United States courts of certain rights relating to certain marks, trade names, or commercial names.

S. 2413

At the request of Mr. BINGAMAN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 2413, a bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes.

S. 2426

At the request of Mr. NELSON of Nebraska, the names of the Senator from Vermont (Mr. JEFFORDS), the Senator from South Dakota (Mr. DASCHLE) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 2426, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 2451

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 2451, a bill to amend the Agricultural Marketing Act of 1946 to restore the application date for country of origin labeling.

S. 2463

At the request of Mr. BROWNBACK, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2463, a bill to terminate the Internal Revenue Code of 1986.

S. 2471

At the request of Mrs. CLINTON, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2471, a bill to regulate the transmission of personally identifiable information to foreign affiliates and subcontractors.

S. CON. RES. 74

At the request of Mrs. CLINTON, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Arkansas (Mr. PRYOR) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. Con. Res. 74, a concurrent resolution expressing the sense of the Congress that a postage stamp should be issued as a testimonial to the Nation's tireless commitment to reuniting America's missing children with their families, and to honor the memories of those children who were victims of abduction and murder.

AMENDMENT NO. 3171

At the request of Mr. WARNER, his name was added as a cosponsor of amendment No. 3171 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3234

At the request of Mr. NELSON of Florida, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 3234 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. CORZINE, Ms. STABENOW, Mrs. CLINTON, and Mr. REED):

S. 2473. A bill to require payment of appropriated funds that are illegally disbursed for political purposes by the Centers for Medicare and Medicaid Services; to the Committee on Finance.

Mr. LAUTENBERG. Mr. president, yesterday, the Comptroller General of the United States ruled that the Bush administration illegally spent taxpayer dollars for political propaganda in violation of two laws.

To make matters worse, these funds were taken from the Medicare Trust Fund.

In other words, money reserved for our seniors' healthcare was illegally used for political activity. It is outrageous.

The President has raised plenty of money for his campaign. Over 200 million dollars. Why does he need to use Medicare funds?

With taxpayer money, the Bush administration produced so-called ''video news released'' —fake news stories that hailed the new Medicare law—and distributed them to TV stations across the country.

This covert propaganda was never identified as being produced by the administration. As a result many news stations ran this story as real news and

viewers had no idea it was produced by the government.

The phony news stories show scenes of the President receiving a standing ovation before signing the bill into law and even end with a sign off from a fake reporter.

The GAO has said that these materials are illegal, but the money is already spent and that money will likely never be recovered unless we pass this legislation.

My bill calls on the Bush-Cheney reelection campaign to repay this money to the Federal Government. It's the right thing to do.

I have long said that this administration's so-called ''education'' campaign on the new Medicare law is fraught with questionable activity.

And now we know that they have in fact acted illegally. I think somewhere along the way they confused the word ''education'' with ''election.''

This is just the most recent incident in a long line of advertising by the Bush administration that the non-partisan GAO has called misleading and political.

If the Bush-Cheney campaign wants to spend funds dollars touting the new Medicare law, that's their prerogative—but they cannot use government agencies and taxpayer funds to do it.

I am all for educating seniors, but I will always guard against any misuse of taxpayer dollars, especially those reserved for Medicare.

I am here today to tell the President: Don't use the people's money to promote your bid for reelection. It's not only unethical, it's against the law. Taxpayer money should not be used for political purposes.

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

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

S. 2473

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 ''Medicare Trust Fund Reimbursement Act of 2004''.

SEC. 2. REPAYMENT TO THE MEDICARE TRUST FUNDS OF AMOUNTS ILLEGALLY DISBURSED FOR POLITICAL PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, if the Comptroller General of the United States determines that the Centers for Medicare & Medicaid Services has violated the restriction on using appropriated funds for publicity or propaganda purposes contained in section 626 of division J of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 470) or any other provision of law, the principal campaign committee (as defined in section 301(5) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(5))) of the President of the United States shall reimburse the Federal Government for the amount used in committing such violation.

(b) REIMBURSEMENT OF MEDICARE TRUST FUNDS.—To the extent that the amount described in subsection (a) was initially appropriated to the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act or the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act, the amount reimbursed under such subsection shall be credited to the Trust Fund to which the amount was initially appropriated.

COMPTROLLER GENERAL OF THE UNITED STATES, UNITED STATES GENERAL ACCOUNTING OFFICE,
Washington, DC.

DECISION

Matter of: Department of Health and Human Services, Centers for Medicare & Medicaid Services—Video News Releases.

File: B–302710.
Date: May 19, 2004.

DIGEST

1. The Centers for Medicare & Medicaid Services's (CMS) use of appropriated funds to pay for the production and distribution of story packages that were not attributed to CMS violated the restriction on using appropriated funds for publicity or propaganda purposes in the Consolidated Appropriations Resolution of 2003, Pub. L. No. 108–7, Div. J, Tit. VI, §626, 117 Stat. 11, 470 (2003).

2. CMS, in using appropriations in violation of the publicity or propaganda prohibition, incurred obligations in excess of appropriations available for that purpose. See B–300325, Dec. 13, 2002. Accordingly, CMS violated the Antideficiency Act, 31 U.S.C. §1341, and must report the violation to the Congress and President in accordance with 31 U.S.C. §1351 and Office of Management and Budget Circular No. A–11.

DECISION

In a March 10, 2004, opinion, we concluded that the Department of Health and Human Services's (HHS) use of appropriated funds to produce and distribute a flyer and print and television advertisements, as part of a campaign to inform Medicare beneficiaries about changes to Medicare under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), did not violate publicity or propaganda prohibitions in the Consolidated Appropriations Act of 2004, Pub. L. No. 108–199, Div. F, Tit. VI, §624, 118 Stat. 3, 356 (2004), and the Consolidated Appropriations Resolution of 2003, Pub. L. No. 108–7, Div. J, Tit. VI, §626, 117 Stat. 11, 470 (2003). B–302504, Mar. 10, 2004. During our development of that opinion, we learned that the Centers for Medicare & Medicaid Services (CMS), an agency in the Department of Health and Human Services, had prepared as part of this campaign video news releases or VNRs, including a news story for television broadcast, to provide information to the television medium. Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, to Gary L. Kepplinger, Deputy General Counsel, General Accounting Office (GAO), April 2, 2004 (Smith Letter). The VNRs consist of (1) video clips known as B-roll film, (2) introductory and concluding slates with facts about MMA, and (3) prepackaged news reports referred to as story packages with suggested lead-in anchor scripts. Importantly, the prepackaged story packages and anchor scripts did not include statements noting that they had been prepared by CMS.

Our March 10, 2004, opinion addressed only the flyer and advertisements and did not address CMS's use of appropriated funds to prepare and distribute the VNRs. This decision addresses whether CMS's use of appropriated funds to produce and distribute the VNRs violated the publicity or propaganda prohibitions enacted in the Consolidated Appropriations Resolution of 2003, cited above. CMS told us that it used fiscal year 2003 CMS program management appropriations to produce and distribute the VNRs. Smith Letter, Enclosure 1 at 8. As we explain below, we conclude that of the three parts of the VNRs, one part—the story packages with suggested scripts—violates the prohibition. In neither the story packages nor the lead-in anchor scripts did HHS or CMS identify itself to the television viewing audience as the source of the news reports. Further, in each news report, the content was attributed to an individual purporting to be a reporter but actually hired by an HHS subcontractor.

To perform our analysis, we requested information from CMS regarding the production, filming and distribution of the VNR materials. Letter from Gary L. Kepplinger, Deputy General Counsel, GAO, to Dennis G. Smith, Acting Administrator, CMS, March 17, 2004. CMS responded by letter dated April 2, 2004. Smith Letter. We met with agency officials to clarify their responses and to gain further factual information regarding the production and distribution of the VNRs at issue. In addition to the information CMS provided us, we also examined available information regarding the use of VNRs generally by the broadcast media and their current use as a public relations tool.

BACKGROUND

Use of VNRs

VNRs have become a popular public relations tool to disseminate desired information from private corporations, nonprofit organizations and government entities, in part because they provide a cheaper alternative to more traditional broadcast advertising.[1] While the practice is widespread and widely known by those in the media industry, the quality and content of materials considered to constitute a VNR can vary greatly.[2] Generally, a VNR package may contain a prepackaged news story, referred to as a story package, accompanied by a suggested script, video clips known as B-roll film, and various other promotional materials.[3] These materials are produced in the same manner in which television news organizations produce materials for their own news segments.[4] By eliminating the production effort and costs of news organizations, producers of VNRs find news organizations willing to broadcast a favorable news segment on the desired topic.[5]

Since 1990, there has been a notable rise in the distribution of VNR materials.[6] With growing use of VNRs, journalism scholars began questioning the effect of this third-party material upon the perception that news was derived from a neutral source.[7] In particular, scholars raised concerns regarding the influence of third-party sources.[8]

Given these ethical concerns, there have been a number of studies of the use of VNRs by the broadcast industry. Several journalism scholars attribute the rise in the use of VNRs to the economic circumstances of the industry.[9] In smaller broadcast markets during the early 1990s, news stations suffered significant reductions in staff and budget, and had difficulty obtaining footage of certain public interest events.[10] Footage from an outside source helped stations fill airtime with programming that would otherwise not be available and helped avoid depletion of already overextended funds.[11]

Studies also show, however, that most news organizations using VNR materials often use only a portion or edited versions of the materials provided.[12] Still, parties interested in obtaining the maximum audience for VNR materials argue that, even if the story package or scripted materials are not used in full, the production of a professionally complete news story provides a framework for the message conveyed in the

See footnotes at end of article.

final broadcast.[13] This allows the story package producer to assert some control over the message conveyed to the target audience.

Also, the use of VNRs may be attributed to the ease with which the materials may be distributed. While some packages are distributed directly from the source to the television stations, satellite and electronic news services such as provided by CNN Newsource facilitate distribution to a number of news markets in a short period of time.[14] Broadcast stations subscribe to these services, which provide, in addition to VNR materials, journalist reports and stories, and advertising.[15] While the news services label VNRs differently than independent journalist news reports, there apparently is no industry standard as to the labeling of VNRs. In fact, when questioned about the use of the VNR materials at issue here, some news organizations indicated that they misread the label or they mistook the story package as an independent journalist news story on CNN Newsource.[16]

Professional journalism societies have noted in their codes of ethics that journalists should resist influence from outside sources, including advertisers and special interest groups.[17] Because VNRs consist of information generated by a group with a distinct perspective on an issue, the unfettered use of VNRs may run afoul of these principles.[18] Moreover, professional organizations warn against using materials that would deceive audiences.[19] VNRs that disclose the source of information to the target audience alleviate these ethical concerns.

CMS's Medicare VNRs

The CMS VNRs consist of three videotapes with corresponding scripts. CMS informed us that these videotapes represent what a news organization would receive when obtaining the VNR materials. Two of the videotapes are in English, and one is in Spanish. The two English videotapes contain three items: (1) video clips, referred to as B-roll, (2) slates containing, among other things, title cards with facts on MMA, and (3) a video segment called a ''story package.''[20] The B-roll provides news organizations with footage for use in developing their own news reports. The slate is a visual feed from CMS to recipient news organizations that contains some facts regarding MMA.[21] The last slate in the VNR materials directs the receiving news station to contact CMS for information on the VNR materials. The story packages are news reports prepared by CMS rather than a news organization.

The B-roll clips on each videotape are exactly the same and contain footage of President Bush, in the presence of Members of Congress and others, signing MMA into law, and a series of clips of seniors engaged in various leisure and health-related activities, including consulting with a pharmacist and being screened for blood pressure. The English videotapes also include clips of Tommy Thompson, the Secretary of the Department of Health and Human Services (HHS), and Leslie Norwalk, Acting Deputy Administrator of CMS, making statements regarding changes to Medicare under MMA. The Spanish videotape includes clips of Dr. Cristina Beato of CMS offering statements about MMA's changes to Medicare, instead of Thompson and Norwalk.

The two English VNRs contain segments entitled ''story packages'' that consist of self-contained news reports regarding Medicare benefits under MMA. Although the English story packages contain several of the same B-roll video clips and the same narrator, identified as Karen Ryan, the contents of the two story packages vary. With each story package, CMS included a script for a news anchor of the recipient news organization to read as a lead-in to the CMS produced news report. One story package focuses on CMS's advertising campaign regarding MMA (Story Package 1). The suggested anchor lead-in states that ''the Federal Government is launching a new, nationwide campaign to educate 41 million people with Medicare about improvements to Medicare.'' The lead-in ends with ''Karen Ryan explains.'' The video portion of the story package begins with an excerpt of the television advertisement with audio indicating ''it's the same Medicare you've always counted on plus more benefits.'' Karen Ryan explains, ''That's the main message Medicare's advertising campaign drives home about the law.'' As more clips from the advertisement appear, Karen Ryan continues her narration, indicating that the campaign helps beneficiaries answer their questions about the new law, the administration is emphasizing that seniors can keep their Medicare the same, and the campaign is part of a larger effort to educate people with Medicare about the new law. The story package ends with Karen Ryan stating: ''In Washington, I'm Karen Ryan reporting.''

The second English story package (Story Package 2) focuses on various provisions of the new prescription drug benefit of MMA and does not mention the advertising campaign of CMS. The anchor lead-in states: ''In December, President Bush signed into law the first ever prescription drug benefit for people with Medicare.'' The anchor lead-in then notes, ''[t]here have been a lot of questions about'' MMA and its changes to Medicare and ''Karen Ryan helps sort through the details.'' The video portion of the news report starts with footage of President Bush signing MMA. Karen Ryan's voice narration indicates that when MMA was ''signed into law last month, millions of people who are covered by Medicare began asking how it will help them.'' Next, the segment runs footage of Tommy Thompson, in which he states that ''it will be the same Medicare system but with new benefits. . . .'' Karen Ryan continues her narration, stating ''most of the attention has focused on the new prescription drug benefit . . . all people with Medicare will be able to get coverage that will lower their prescription drug spending . . . Medicare will offer some immediate help through a discount card.'' She also tells viewers that new preventive benefits will be available, low-income individuals may qualify for a $600 credit on available drug discount cards, and ''Medicare officials emphasize that no one will be forced to sign up for any of the new benefits.'' Karen Ryan's narration leads into clips of Secretary Thompson and Leslie Norwalk explaining other beneficial provisions of MMA. Similar to Story Package 1, Story Package 2 ends with ''In Washington, I'm Karen Ryan reporting.''

The Spanish-language materials contain the same three items as the English language VNRs-a B-roll, slates and a story package (Story Package 3). After the B-roll segments, the story package segment appears. This segment is considerably longer than its two English counterparts. Similar to Story Package 2, Story Package 3 focuses on prescription drug benefits available under MMA. It does not mention that CMS is engaging in an advertising campaign. Here, the anchor lead-in is similar to Story Package 2, except the anchor indicates that Alberto Garcia ''helps sort through the details.'' The video segment begins with the footage of President Bush signing MMA into law as Alberto Garcia narrates that after signing the law, millions of people who are covered by Medicare began asking how the new law will help them. The remainder of the story package contains identical footage of Dr. Beato and of seniors engaged in various activities as in the B-roll footage. During the video clips of seniors, Alberto Garcia narrates that the focus of most of the attention to MMA is on the prescription drug benefit available in 2006. He also explains that prescription drug discount cards will be available in June 2004 and that ''[p]eople with Medicare may be able to choose from several different drug discount cards, offering up to 25 percent savings on certain medications.''[22] Alberto Garcia concludes his report, stating: ''In Washington, I'm Alberto Garcia reporting.''

In response to our request for more factual information on CMS's practice of using VNRs, CMS forwarded to us a fourth videotape. This tape contains Story Package 2 and two VNRs, each of which CMS described as a ''produced story segment,'' that HHS produced and distributed in 1999 under then-Secretary Donna Shalala of the Clinton Administration. Smith Letter at 2. These two story packages were designed to inform beneficiaries of the Clinton Administration's position on prescription drug benefits and preventive health benefits. CMS pointed out similarities between the story packages in current use and the earlier ones. Much like the story packages at issue here, the earlier story packages contain footage of seniors engaging in various activities, then-HHS Secretary Donna Shalala appearing to answer questions regarding the provisions of proposed legislation for a prescription drug benefits and preventive health benefits, and a report of the Administration's proposal. The earlier story packages end with the phrase, ''Lovell Brigham, reporting.''

Distribution of Medicare VNRs

CMS explained to us that HHS hired Ketchum, Inc., to disseminate information regarding the changes to Medicare under MMA. Specifically, HHS contracted with Ketchum to assist HHS and its agencies with a ''full range of social marketing activities to plan, develop, produce, and deliver consumer-based communication programs, strategies, and materials.'' Ketchum Contract at 2. Ketchum hired Home Front Communications (HFC) to create the VNR materials. HFC is a broadcast public relations firm specializing in producing video products. Smith Letter, Enclosure 1 at 6–7. HFC wrote the VNR scripts, which were reviewed, edited, and approved by CMS and HHS. Id. at 7. HFC completed all production work, including filming, audio work and editing. The final VNR packages were reviewed and approved by CMS and HHS. Id.

The VNR materials were then distributed to television stations via satellite, electronic services provided by CNN Newsource, and/or mail. Id. at 2. CMS and HFC staff members contacted some news directors by telephone to inform the stations that the materials were available. Id. Additionally, CMS e-mailed and faxed news advisories to news stations regarding the VNR availability. Id.; see also Smith Letter, Enclosure 4. The advisory indicated the satellite coordinates to obtain the materials, how to find the materials on CNN Newsource, and bullet-point key facts regarding the new benefits available. Smith Letter, Enclosure 4. The advisory further explains what the visual elements of the VNR consisted of, including interviews, a story package, and B-roll. Id. All stations could access satellite distribution. Smith Letter, Enclosure 1 at 6. Computers of the subscribing location stations' newsrooms could access CNN Newsource. Id. The advisory directed news stations to contact Robin Lane, an HFC employee, for more information on retrieving VNR materials. CMS also mailed videotapes of VNR materials to those television stations that requested the material. Smith Letter, Enclosure 4. CMS provided us a list of television

stations that aired at least some portion of the VNRs between January 22, 2004, and February 12, 2004. This list contained 40 stations in 33 different markets. Smith Letter, Enclosure 3. CMS did not identify what parts of the VNR each station broadcasted. One of the stations that aired the story package was WBRZ, Baton Rouge, Louisiana. According to transcripts published on the World Wide Web, WBRZ broadcast Story Package 2 and used the suggested anchor lead-in script on January 22, 2004, in its entirety.[23] At least two other television stations may have aired either Story Package 1 or 2 in their entirety. A review of excerpts of transcripts from Video Monitoring Services of America show that two stations, WMBC–TV in New Jersey (Story Package 1) and WAGA–TV in Atlanta (Story Package 2), aired MMA news stories ending with Karen Ryan's by-line.[24]

DISCUSSION

This is the first occasion that we have had to review the use of appropriated funds by government entities to engage in the production of VNRs. At issue here is whether CMS's use of appropriated funds to produce VNR materials constituted a proper use of those funds. In its written response and during our informal interview, CMS contended that the production of the VNR materials constitutes a ''standard practice in the news sector'' and a ''well-established and well-understood use of a common news and public affairs practice.'' Smith Letter at 2. While we recognize that the use of VNR materials, with already prepared story packages, is a common practice in the public relations industry and utilized not only by government entities but also the private and non-profit sector as well, our analysis of the proper use of appropriated funds is not based upon the norms in the public relations and media industry.

CMS told us that it used fiscal year 2003 CMS program management appropriations to produce and distribute the VNR package. Smith Letter, Enclosure 1 at 8. While CMS may have authority to use appropriated funds to disseminate information regarding the changes to Medicare pursuant to MMA,[25] this authority is subject to the publicity or propaganda prohibition appearing in the annual appropriation act.[26] Specifically, this prohibition states: ''No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.'' Pub. L. No. 108–7, Div. J, Tit. VI, §626, 117 Stat. 11, 470 (2003).

Our March 10, 2004, opinion noted that to date we have applied the publicity or propaganda restriction to prohibit the use of appropriated funds for materials that are self-aggrandizing, purely partisan in nature, or covert as to source. See generally B–302504. Of these three types, the VNR materials on MMA raise concerns as to whether they constitute ''covert'' propaganda because they are misleading as to source.[27]

CMS asserts that, in keeping with the traditional practices in the media industry, CMS or the service it used to distribute the VNR materials clearly labeled the materials as VNRs. See generally Smith Letter. Because they are so labeled and easily identifiable among those in the media, CMS contends that the story packages could not be considered misleading as to source. CMS officials also assert that it was not their intent to distribute the VNR materials to the broadcast stations covertly and that the labeling of the entire VNR package clearly attributes the source of the information to HHS and CMS. Smith Letter, Enclosure 1 at 4.

The ''critical element of covert propaganda is the concealment of the agency's role in sponsoring the materials.'' B–229257, June 10, 1988. In our case law, findings of propaganda are predicated upon the fact that the target audience could not ascertain the information source. For example, we found government-prepared editorials to be covert propaganda; although the newspapers who would have printed the suggested editorials should have been aware of the source, the reading public would not have been aware of the source. B–223098, Oct. 10, 1986. In that case, we examined materials concerning President Reagan's proposal to transfer the Small Business Administration (SBA) to the Department of Commerce. Id. In support of the Administration's proposal, SBA prepared and distributed a variety of materials, including suggested editorials. SBA prepared these editorials and provided them to newspapers around the country to run as the position of the recipient newspapers without disclosing to the readers of those editorials that SBA was the source of the information. Because the SBA-prepared editorials did not identify SBA as the source, SBA's use of appropriated funds to prepare and distribute the editorials violated the publicity or propaganda prohibition.[28]

In a 1987 case, the Department of State's Office of Public Diplomacy for Latin America violated the prohibition by paying consultants to write op-ed pieces in support of the Administration's policy on Central America for distribution to newspapers. B–229069, Sept. 30, 1987. The State Department did not advise the newspapers of its involvement in the writing of the op-ed pieces. The newspapers published these articles for distribution to an equally uninformed audience of individual readers. These materials were ''propaganda'' within the ''common understanding'' of the term, and they constituted ''deceptive covert propaganda'' designed to influence the media and public to support the Administration's Latin American policies. Id.

In defending its VNRs, CMS fails to distinguish among the three separate parts of its VNRs and the intended audience for each part. We do not dispute the fact that CMS labeled the entire package of VNR materials so that the receiving news organizations could identify HHS or CMS as the source of the information, whether they were received directly from CMS through the mail or retrieved by the news organizations from CNN Newsource or other satellite services.[29] However, in both B–223098 and B–229069, the readers of the printed editorials and op-ed pieces would not have been aware of the government's influence. In analyzing whether the three separate materials that make up the VNR package are covert propaganda, we do not consider the VNR as a whole, because each of the three items that comprise the VNR was prepared for a different purpose and audience.

In its written response and during our interviews, CMS indicated that the 41 million Medicare beneficiaries, who may comprise the news stations' viewing audience, and not just the television stations themselves, were the intended audience of the VNR materials. Some VNR materials, including the B-roll and the slates, could not reasonably be targeted directly to a television viewing audience. By their very nature, the B-roll and slates were designed to be incorporated in a news story of the receiving stations' own creation. CMS clearly identified itself as the source of these materials to the television stations receiving them. CMS made efforts to notify the news stations of the availability of these materials via e-mail, telephone, and facsimile and the available distribution sources identified the materials as a VNR. Smith Letter at 2, Enclosure 1 at 2. Accordingly, the B-roll and slates do not violate the publicity or propaganda prohibition.

The story packages and lead-in scripts, however, were clearly designed to be seen and heard directly by the television viewing audience and not solely by the media receiving the package. CMS and HHS officials told us that the story packages were designed so that television stations could include them in their news broadcasts exactly as CMS had produced them, without any production effort by the stations. The suggested anchor lead-in scripts facilitate the unaltered use of the story package, announcing the package as a news story by Karen Ryan or Alberto Garcia. Importantly, CMS included no statement or other reference in either the story package or the anchor lead-in script to ensure that the viewing audience would be aware that CMS is the source of the purported news story.

The story packages, similar to the SBA editorials and the State Department op-ed pieces, could be reproduced with no alteration thereby allowing the targeted audience to believe that the information came from a nongovernment source or neutral party. The story packages of the VNRs consist of a complete message that could be reproduced directly by the news organizations to be viewed by the audience of the newscasts. As such, the viewing audience does not know, for example, that Karen Ryan and Alberto Garcia were paid with HHS funds for their work.

The receiving news organization's ability to edit the story packages to produce an independent news story does not negate the fact that CMS designed the segments to broadcast as CMS had produced them. CMS's effort to identify itself to the news organizations that received the VNRs did not alert television viewers that CMS was the source of the story package. CMS has acknowledged that the television viewer was the targeted audience. Because CMS did not identify itself as the source of the news report, the story packages, including the lead-in script, violate the publicity or propaganda prohibition.[30]

In a modest but meaningful way, the publicity or propaganda restriction helps to mark the boundary between an agency making information available to the public and agencies creating news reports unbeknownst to the receiving audience. It is not the only marker Congress has placed in statute between the government and the American press, however. Consistent with the restrictions on publicity or propaganda ''within the United States,''[31] Congress has prohibited the U.S. Information Agency and its succeeding agency, Board of Broadcasting Governors, created by Congress for the purpose of producing pro-U.S. government news reports and print materials for international audiences, 22 U.S.C. §1461, from broadcasting to domestic audiences, 22 U.S.C. §§1461(b), 1461–1a.[32] In limiting domestic dissemination of the U.S. government-produced news reports, Congress was reflecting concern that the availability of government news broadcasts may infringe upon the traditional freedom of the press and attempt to control public opinion. See B–118654–O.M., Feb. 12, 1979. Congress also restricted government-produced programming for domestic audiences in the law creating the Public Broadcasting Corporation. 47 U.S.C. §396. Although the mission of the Public Broadcasting Corporation includes instructional, educational and cultural purposes, the statute creating the Corporation prohibits the Corporation from directly producing any news programming. 47 U.S.C. §396(g)(3)(A) & (B).[33] While Congress authorized HHS to conduct a wide-range of informational activities, CMS was given no authority to produce and disseminate unattributed news stories.

CMS makes two other arguments in support of its use of appropriated funds to produce and distribute the story packages. Neither argument is persuasive. CMS argues that the VNR materials cannot be covert propaganda because the VNR materials were not produced as a ''purported editorial, advocacy piece or commentary.'' Smith Letter, Enclosure 1 at 4. CMS asserts that the narration by Karen Ryan (and presumably Alberto Garcia) does not take a position on the MMA. Id. While we agree that the story packages may not be characterized as editorials, explicit advocacy is not necessary to find a violation of the prohibition.[34] As with the SBA-suggested editorials, the content of the story packages themselves would not violate the publicity or propaganda prohibition if identifying the source to the target audience were not an issue. See B–302504, Mar. 10, 2004.

Further, CMS refers to our recent opinion in B–301022, Mar. 10, 2004, regarding the Office of National Drug Control Policy's (ONDCP) open letter to state-level prosecutors opposing efforts to legalize marijuana and other controlled substances.[35] Smith Letter, Enclosure 1 at 3. The open letter contained two attachments, one of which did not identify ONDCP as the source of the information. B–301022, Mar. 10, 2004. We found that the unidentified attachment was not a violation of the publicity or propaganda prohibition because the document was part of a package that clearly identified ONDCP as the source and because there was no attempt to portray the contents of the document as the position of an individual outside the agency. Id.

This reasoning cannot be applied to the story packages at issue here. The target audience of the ONDCP letter and attachments, the state prosecutors, had access to the entire package. The television viewing audiences, however, could not view the entire MMA VNR package. Evidence shows, and CMS acknowledges, that the story package could be broadcast without edit or alteration, and actually was broadcasted unedited in some markets. Television audiences viewing the story packages were not in a position to determine the source from the other materials in the VNR packages. Unlike the ONDCP materials, the content of the message expressed in the story packages was attributed to alleged reporters, Karen Ryan and Alberto Garcia, and not to HHS or CMS. Nothing in the story packages permit the viewer to know that Karen Ryan and Alberto Garcia were paid with federal funds through a contractor to report the message in the story packages. The entire story package was developed with appropriated funds but appears to be an independent news story. The failure to identify HHS or CMS as the source within the story package is not remedied by the fact that the other materials in the VNR package identify HHS and CMS as the source of the materials or that the content of the story package did not attempt to attribute the agency's position to an individual outside the agency.[36]

HHS's misuse of appropriated funds in violation of the publicity or propaganda prohibition also constitutes a violation of the Antideficiency Act, 31 U.S.C. §1341(a). The Antideficiency Act prohibits making or authorizing an expenditure or obligation that exceeds available budget authority. See B–300325, Dec. 13, 2002. Because CMS has no appropriation available for the production and distribution of materials that violate the publicity or propaganda prohibition, CMS has violated the Antideficiency Act, 31 U.S.C. §1341(a). See B–300325, Dec. 13, 2002. CMS must report its Antideficiency Act violation to the President and the Congress. 31 U.S.C. §1351.[37] Office of Management and Budget Circular No. A–11 provides guidance to executive agencies on information to include in Antideficiency Act reports.

CONCLUSION

Although the VNR materials were labeled so that the television news stations could identify CMS as the source of the materials, part of the VNR materials—the story packages and lead-in anchor scripts—were targeted not only to the television news stations but also to the television viewing audience. Neither the story packages nor scripts identified HHS or CMS as the source to the targeted television audience, and the content of the news reports was attributed to individuals purporting to be reporters, but actually hired by an HHS subcontractor. For these reasons, the use of appropriated funds for production and distribution of the story packages and suggested scripts violated the publicity or propaganda prohibition of the Consolidated Appropriation Resolution of 2003, Pub. L. No. 108–7, Div. J, Tit. VI, §626, 117 Stat. 11, 470 (2003). Moreover, because CMS had no appropriation available to produce and distribute materials in violation of the publicity or propaganda prohibition, CMS violated the Antideficiency Act, 31 U.S.C. §1341. CMS must report the Antideficiency Act violation to the Congress and the President. 31 U.S.C. §1351.

ANTHONY H. GAMBOA,
General Counsel.

FOOTNOTES

[1] Eugene Marlowe, Sophisticated ''News'' Videos Gain Wide Acceptance, Pub. Rel. J. 17 (Aug./Sept. 1994).

[2] In 1991, it was reported that 78 percent of news directors polled used edited VNRs at least once a week in their broadcasts. Bob Sonenclar, The VNR Top Ten: How Much Video PR Gets On the Evening News?, Col. J. Rev. 14 (Mar. 1, 1991). In 1992, another source reported that 100 percent of polled stations admitted to using some VNR materials in their newscasts. Anne R. Owen and James A. Karrh, Video News Releases: Effects on Viewer Recall and Attitudes, 22 Pub. Rel. Rev. 369 (Winter 1996). In 2001, it was reported that approximately 800 television stations in the United States use VNRs. Mark D. Harmon and Candace White, How Television News Programs Use Video News Releases, 27 Pub. Rel. Rev. 213 (June 22, 2001).

[3] Marlowe, supra note 1, at 17.

[4] Id.

[5] Glen T. Cameron and David Blount, VNRs and Air Checks: A Content Analysis of the Use of Video News Releases in Television Newscasts, 73 Journalism and Mass Comm. Q. 890, 891 (Winter 1996) (summarizes the logistic and resource constraints of the media industry attributed to the media's decision to utilize VNR material).

[6] Sonenclar, supra note 2, noting the anticipated rise in the use of VNRs. Harmon and White, supra note 2, noting the new importance of using VNRs in the media industry in the late 1980s and into the 1990s.

[7] See generally Harmon and White, supra note 2, summarizing the various studies in the 1990s regarding the ethics of using VNRs in the journalism industry.

[8] Id.; see also Owen and Karrh, note 2, examining the credibility of news programming using messages derived from VNRs.

[9] Marlowe, supra note 1, at 17. See also Cameron and Blount, supra note 5, at 893.

[10] Owen and Karrh, supra note 2. Cameron and Blount, supra note 5, at 893.

[11] Cameron and Blount, supra note 5, at 893.

[12] Id. This study showed that most news stations, regardless of size of the market, did not use the prepackaged news stories on a wide scale basis. The study noted that, while most stations used part of the VNRs, very few stations used the prepackaged story with no alteration.

[13] Id. at 901.

[14] Harmon and White, supra note 2.

[15] Zachary Roth, Fact Check, CNN: Spinning PR into News, CJR Campaign Desk, Mar. 22, 2004, available at http://www.campaigndesk.org/archives/000318.asp.

[16] Id. The article also notes that most news directors that ran the VNRs at issue here expressed displeasure with the Administration, and some thought the distribution of the VNR took ''advantage of the smaller stations' well-known lack of resources.''

[17] See Code of Ethics and Professional Conduct Radio—Television News Directors Association (RTNDA), available at http://www.rtnda.org/ethics/coe.html; see also Society of Professional Journalists (SPJ) Code of Ethics, available at http://www.spi.org/ethics code-asp.

[18] SPJ Code of Ethics states: ''Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.'' SPJ Code of Ethics, supra note 17. RTNDA Code of Ethics states: ''Gather and report news without fear or favor, and vigorously resist undue influence from any outside forces, including advertisers, sources, story subjects, powerful individuals, and special interest groups.'' Code of Ethics and Professional Conduct RTNDA, supra note 17.

[19] RTNDA Code of Ethics states: ''Clearly disclose the origin of information and label all material provided by outsiders.'' (Emphasis added.) SPJ Code of Ethics states: ''Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.''

[20] In addition to these materials, one of the English-language videos contains footage of an advertisement that appeared on national television. Our legal opinion of March 10, 2004, B–302504, reviewed this material, and found that HHS's use of appropriated funds for the advertisement did not violate the publicity or propaganda prohibition.

[21] In addition to the title cards, the slates contain the visual feeds of the B-roll and the story packages. Each slate may be separated and edited for individual use by the receiving television station. For example, the receiving station could separate the slate with the B-roll footage of seniors engaged in health-related activities from the other B-roll footage and the story packages. The station could then use this slate separately from the remaining VNR materials.

[22] In Story Package 2, Leslie Norwalk, in one of her ''interview'' video clips, not Karen Ryan, the reporter, made this point.

[23] The transcript, available http://www.2theadvocate.com/scripts/012304/noon.htm, was accessed on April 7, 2004.

[24] The partial transcripts indicate the time each news item was broadcast, the topic discussed, some information on visual clips, and the reporter on the assignment. For example, the partial transcript for the WAGA-TV transcript indicated that the story ran for 1 minute and 22 seconds, contained video clips from the television campaign advertisements and a pharmacy checkout, an interview with Tommy Thompson, and Karen Ryan reporting from Washington. See Video Monitoring Services of America, Good Day Atlanta, February 4, 2004, available at www.nexis.com.

[25] See generally, MMA §101(a) (adding new sections to the Social Security Act and expanding HHS's authority to engage in information dissemination activities to inform Medicare beneficiaries about their benefits).

[26] We need not speculate, and this decision does not address, what type of authorization an agency must have, and how specific that authority would have to be, to prepare and distribute a ''news story'' absent a prohibition on publicity or propaganda.

[27] We did not criticize the flyer and advertisements under consideration in our March 10, 2004, opinion as covert propaganda because all of the materials identified HHS or CMS as the source to every audience viewing the material.

[28] We compared SBA's editorials to lobbying campaigns, attempting to manipulate the perception that public support for an issue was greater than it actually was. Id.; see also B–129874, Sept. 11, 1978 (criticizing a plan to distribute ''canned editorial materials'').

[29] Some news organizations reported that the use of such information was a mistake due to their own misreading of the label on the materials received or some confusion as to the labeling by CNN Newsource. Later reports indicate that CNN Newsource has changed its cataloguing and labeling of VNRs in response to these reports. See Zachary Roth, Fact Check: CNN Cracks Down—on CNN, CJR Campaign Desk, Mar. 31, 2004, available at http://www.campaigndesk.org/archives/000358.asp.

[30] As we noted in the background section of this decision, CMS forwarded to us a videotape including what CMS described as two story packages that HHS had produced and distributed during the Clinton Administration in October 1999. These two story packages were not brought to our attention at that time. Had we been aware of the use of story packages in this or other contexts, the principles discussed here would have been applicable. We note, however, that accounts of the government are settled by operation of law three years after the close of the fiscal year. 31 U.S.C. §3526(c).

[31] The prohibition restricts publicity or propaganda ''within the United States.'' The Consolidated Appropriations Resolution of 2003, Pub. L. No. 108–7, Div. J, Tit. VI, §626, 117 Stat. 11, 470 (2003).

[32] There are some limited exceptions in which Broadcasting Board of Governors and United States Information Agency materials could be viewed by a domestic audience. 22 U.S.C. §1461(b). None of these exceptions are relevant here.

[33] The Administration and Congress have significant control over the Public Broadcasting Corporation (PBC). The President appoints and the Senate confirms the nine members of the Board of Directors. 47 U.S.C. §396(c)(2). PBC is required to report annually to Congress regarding its operations, activities, financial condition and accomplishments. 47 U.S.C. §396(i).

[34] Although the story package content may not contain strong editorial positions on the benefits of MMA, they are not strictly factual news stories as HHS contends. On balance, the contents of the story packages consist of a favorable report on effects on Medicare beneficiaries, containing the same notable omissions and weaknesses as the flyer and advertisements that we reviewed in our March 2004 opinion.

[35] The National District Attorneys Association sent the open letter and attachments with its own cover letter to the state-level prosecutors.

[38] CMS also argues that VNRs are similar to press releases as ''[e]ach is designed to provide information to reporters and is crafted for the use by the media to which it is directed. Each provides quotes, facts and background that a reporter can use to write or produce a story. Each is created to provide context to the issue.'' Smith Letter at 1. There may, indeed, be similarities between these two public relations tools. We are familiar with the practice of preparing press releases to include information useful to reporters who then prepare and produce their own news stories for publication. With the story packages, CMS prepared news stories using alleged reporters rather than simply offering information to reporters who would prepare their own stories.

[37] We were unable to identify the amount of HHS's violation. HHS advised that the English language story packages cost $33,250, and that the Spanish language VNR cost $9,500. Smith Letter, Enclosure 1 at 8. Although requested, HHS did not provide further documentation of these costs to us. We did not audit these amounts.

By Mr. ALLARD (for himself, Mr. DURBIN, and Ms. LANDRIEU):

S. 2474. A bill to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes; to the Committee on Finance.

Mr. ALLARD. Mr. President, I rise to introduce the Guardsmen and Reservists Financial Relief Act of 2004. National guardsmen and reservists are serving our country with virtue and valor in the war on terror. These brave men and women deserve recognition for the many sacrifices they make in serving and protecting this great country. Their families also deserve protection from potential financial hardships experienced at home that may result from the guardsmen or reservists being called to service.

Since September 11, 2004, many men and women have left their jobs in the private sector to fill vitally needed positions for our national defense. In playing the role of true citizen soldiers, some have taken drastic pay cuts from their civilian jobs in order to fulfill their duty to their country. This is beginning to create financial strains on their families.

The Department of Defense estimates that 3 percent of its reservists have been called up more than once since September 11, 2001. Additionally, the GAO reports that nearly 41 percent of reservists are impacted by a pay discrepancy between his or her military and civilian salary.

The Guardsmen and Reservists Financial Relief Act of 2004 will see that the families and loved ones of Guard members and reservists, who are called to service after September 11, 2001, can access retirement funds without incurring any penalties.

This important legislation will allow Guard members and reservists who are activated for more than 179 days to make penalty-free early withdrawals from their IRA or 401(k) plan.

This bill retroactively covers members of the Guard and Reserve who were called to service beginning on September 11, 2001, and extends coverage to those who may continue to be called on to serve on an active basis through September 12, 2005.

Furthermore, this bill will encourage repayment of any withdrawal from an IRA or 401(k) fund within 2 years of a guardsman or reservist ending their active duty, ensuring retirement, financial security for soldiers and their families.

It also temporarily lifts the contribution cap to equal the amount of the withdrawn funds to allow for full repayment.

National Guard members and military reservists have been imperative to the military strength of our Nation over the years. Today, almost half of our military strength is from those who serve in the National Guard and military Reserve. There are currently 169,000 National Guard members and military reservists on active duty helping fight the war on terror.

Since September 11, 2001, 373,707 total National Guard members and military reservists have been mobilized. There is no doubt we owe a great deal to our men and women in uniform who are so honorably serving their country by fighting the war on terror. Helping to ease the financial burdens of families of Guard members and reservists is a good start.

I look forward to working with my colleagues in the Senate on the Guardsmen and Reservists Financial Relief of 2004 to provide members of our National Guard and military Reserve with the financial relief they deserve for loyally serving and protecting this country.

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

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

S. 2474

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 ''Guardsmen and Reservists Financial Relief Act of 2004''.

SEC. 2. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

''(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) the date on which a period referred to in section 72(t)(2)(G)(iii)(III) begins, and''.

(2) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(G) applies.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after September 11, 2001.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, and Mr. SCHUMER):

S. 2475. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the Credit Card Minimum Payment Warning Act. I greatly appreciate the significant contributions Senator DURBIN made to this

bill, and I thank him very much for that. Also, I thank Senator LEAHY and Senator SCHUMER for cosponsoring this legislation.

Americans are carrying enormous amounts of debt. In 2003, consumer debt increased for the first time to more than $2 trillion, according to the Federal Reserve. This is a 28-percent increase since the year 2000. According to the Daily Bankruptcy News, consumer debt is now equal to 110 percent of disposable income. Ten years ago, it was 85 percent; and 20 years ago, it was 65 percent. A key component of household debt can be attributed to the use of credit cards. Revolving debt, mostly comprised of credit card debt, has more than doubled from $313 billion in January 1994 to $753 billion in debt in January 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately $10,000 to $12,000 in total revolving debt and has nine credit cards.

More and more working families are trying to meet growing financial obligations and are having difficulties surviving financially. When interest rates do eventually rise, consumers' increasing debt obligations will be compounded further.

As household debt has increased, bankruptcy filings have surged to record levels. In the year 2003, more than 1.6 million consumers filed for bankruptcy. This staggering amount is an increase of 5.6 percent over the previous record set in 2002. Bankruptcies disrupt the lives of consumers and limit their ability to access credit in the future. In addition, bankruptcies lead to significant financial losses for creditors. It is imperative that we make consumers more aware of the long-term effects of their financial decisions, particularly in managing their credit card debt, so that they can avoid bankruptcy.

Even as we contemplate the consequences of more and more debt, it has become easier to access credit. Preapproved credit card offers are now a routine piece of mail. Students are offered credit cards at earlier ages, especially in view of the success that credit card companies are having with their aggressive campaigns targeted towards college students. Mr. President, 55 percent of college students acquire their first credit card during their first year in college, and 83 percent of college students have at least one credit card. Forty-five percent of college students are in credit card debt, with the average debt being over $3,000.

While it is relatively easy to obtain credit, not enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use.

Our legislation will provide a wakeup call for consumers. It will make it very clear what costs consumers will incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help them to make informed choices about the payments that they choose to make towards their balance.

This bill requires a minimum payment warning notification on monthly statements stating that making the minimum payment will increase the amount of interest that will be paid and extend the amount of time it will take to repay the outstanding balance. Consumers would have to be informed of how many years and months it will take to repay their entire balance if they make only the minimum payments. In addition, the total costs in interest and principal, if the consumer pays only the minimum payment, would have to be disclosed. These provisions will make individuals much more aware of the true costs of their credit card debts.

The bill also requires that credit card companies provide useful information so that people can develop strategies to free themselves of credit card debt. Consumers would have to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months. Finally, the legislation would require that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. In order to ensure that consumers are referred from the toll-free number to only trustworthy organizations, the agencies for referral would have to be approved by the Federal Trade Commission and the Federal Reserve Board as having met comprehensive quality standards. These standards are necessary because certain credit counseling agencies have abused their nonprofit, tax-exempt status and have taken advantage of people seeking assistance in managing their debts. People believe, sometimes mistakenly, that they can place blind trust in nonprofit organizations and that their fees will be lower than those of other credit counseling organizations.

Too many individuals may not realize that the credit counseling industry does deserve the trust that consumers often place in it.

The Credit Card Minimum Payment Warning Act has been endorsed by the Consumer Federation of America, Consumers Union, and U.S. Public Interest Research Group.

I ask unanimous consent that the letter of support and factsheet from these organizations be printed in the RECORD.

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

CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, U.S. PUBLIC INTEREST RESEARCH GROUP,

May 13, 2004:

DEAR SENATORS AKAKA AND DURBIN The undersigned national consumer organizations write to strongly support the Credit Card Minimum Payment Warning Act. The act would require credit card issuers to disclose more information to consumers about the costs associated with paying their bills at ever-declining minimum payment rates. The Act provides a personalized ''price tag'' so consumers can understand what are the real costs of credit card debt and avoid financial problems in the future.

Undisputed evidence links the rise in bankruptcy in recent years to the increase in consumer credit outstanding. These numbers have moved in lockstep for more than 20 years. Revolving credit, for example (most of which is credit card debt) ballooned from $214 billion in January 1990 to over $750 billion currently. As a family debt increases, debt service payments on items such as interest and late fees take an ever-increasing piece of their budget. For some families, this contributes to the collapse of their budget. Bankruptcy becomes the only way out. (See the attached fact sheet for more information about the scope and impact of credit card debt.)

Credit card issuers have exacerbated the financial problems that many families have faced by lowering minimum payment amounts, from around 4 percent of the balance owed, to about 2 percent currently. This decline in the typical minimum payment is a significant reason for the rise in consumer bankruptcies in recent years. A low minimum payment often barely covers interest obligations. It convinces many borrowers that they are financially sound as long as they can meet all of their minimum payment obligations. However, those that cannot afford to make these payments often carry so much debt that bankruptcy is usually the only viable option.

This bill will provide consumers several crucial pieces of information on their monthly credit card statement:

A ''minimum payment warning'' that paying at the minimum rate will increase the amount of interest that is owed and the time it will take to repay the balance.

The number of years and months that it will take the consumer to pay off the balance at the minimum rate.

The total costs in interest and principal if the consumer pays at the minimum rate.

The monthly payment that would be required to pay the balance off in three years.

The bill also requires that credit card companies provide a toll-free number that consumers can call to receive information about credit counseling and debt management assistance. In order to assure that consumers are referred to honest, legitimate non-profit credit counselors, the bill requires the Federal Reserve to screen these agencies to ensure that they meet rigorous quality standards.

Our groups command you for offering this very important and long-overdue piece of legislation. It provides the kind of personalized, timely disclosure information that will help debt-choked families make informed decisions and start to work their way back to financial health.

Sincerely,

TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.
ADAM GOLDBERG,
Policy Analyst, Consumers Union.
EDMUND MIERZWINSKI,
Consumer Programs Director, U.S. Public Interest Research Group.

FACTS ABOUT CREDIT CARD DEBT

Revolving debt (most of which is credit card debt) has ballooned from $54 billion in January 1980 to over $750 billion currently.

	In billions
January 1980	54
January 1984	79
January 1990	214
January 1994	313
January 2004	753

Source: http://www.federalreserve.gov/Releases/G19/his/cc his sa.html.

About one-twelfth of this debt is paid off before it incurs interest, so Americans pay interest on an annual load of about $690 billion in revolving debt.

According to the Federal Reserve, the most recent average credit card interest rate is 12.4% APR. At simple interest, with no compounding, then, consumers pay at least $85 billion annually in interest on credit card and other revolving debt.

Just about 55 percent of consumers carry debt. The rest are convenience users.

From PIRG/CFA analysis of Federal Reserve data, the average household with debt carriers approximately $10,000–12,000 in total revolving debt and has approximately nine cards.

FACTS ABOUT THE EFFECT OF MINIMUM MONTHLY PAYMENTS

A household making the monthly minimum required payments on this debt (usually the greater of 2 percent of the unpaid balance or $20) at the very low average 12.4% APR (many consumers pay much higher penalty rates than this FRB-reported average) would pay $1,175 in interest just in the first year, even if these cards are cut up and not used again.

This household would pay a total of over $9,800 in interest over a period of 25 years and three months. That fact is not disclosed.

A household or consumer who merely doubled their minimum payment and paid 4% of the amount due would fare better. A household or consumer that paid 10% of the balance each month would fare much better. Here is comparison.

Minimum Payment Warnings Would Encourage Larger Payments and Save Consumers Thousands of Dollars in High-Priced Credit Card Debt.

Credit Card Debt of $10,000 at Modest 12.4% APR	Monthly Payment (% of unpaid balance)		
	2%	4%	10%
First Year Interest	$1,175	$1,054	$775
Total Interest Owed	$9,834	$3,345	$1,129
Months To Pay Owed	303	127	52
Years to Pay	25.3	10.6	4.3

Calculations by U.S. PIRG. also see http://www.truthaboutcredit.org/lowerapr.htm for additional comparisons and amortization tables

Giving consumers a minimum payment warning on their credit card statements is the most powerful action Congress could take to increase consumer understanding of the cost of credit card debt.

FACTS ABOUT WHO OWES CREDIT CARD DEBT

Credit card debt has risen fastest among lower-income Americans. These families saw the largest increase—a 184 percent rise in their debt—but even very high-income families had 28 percent more credit card debt in 2001 than they did in 1989. Source: Demos

Thirty-nine percent of student loan borrowers now graduate with unmanageable levels of debt, meaning that their monthly payments are more than 8 percent of their monthly incomes. According to PIRG analysis of the 1999–2000 NPSAS data, in 2001, 41 percent of the graduating seniors carried a credit card balance, with an average balance of $3,071. Student loan borrowers were even more likely to carry credit card debt, with 48 percent of borrowers carrying an average credit card balance of $3,176. See ''The Burden of Borrowing,'' 2002, Tracey King, the State PIRGs, *http://www.pirg.org/highered/BurdenofBorrowing.pdf*

While less likely to have credit cards than white families, data show that African-American and Hispanic families are more likely to carry debt.

	% With credit cards 2001	Cardholding % with debt 2001	Average credit card debt 2001
All families	76	55	$4,126
White families	82	51	4,381
Black families	59	84	2,950
Hispanic families	53	75	3,691

Demos calculation using 2001 Survey of Consumer Finance. See Borrowing To Make Ends Meet. Demos, http://www.demos-usa.org/pubs/borrowing__to__make__ends__meet.pdf.

SENIORS (OVER AGE 65)

Credit card debt among older Americans increased by 89 percent from 1992 to 2001. Average balances among indebted adults over 65 increased by 89 percent, to $4,041.

Seniors between 65 and 69 years old, presumably the newly-retired, saw the most staggering rise in credit card debt—217 percent—to an average of $5,844.

Female-headed senior households experienced a 48 percent increase between 1992 and 2001, to an average of $2,319.

Among seniors with incomes under $50,000 (70 percent of seniors), about one in five families with credit card debt is in debt hardship—spending over 40 percent of their income on debt payments, including mortgage debt.

TRANSITIONERS (AGES 55–64)

Transitioners experienced a 47 percent increase in credit card debt between 1992 and 2001, to an average of $4,088.

The average credit card-indebted family in this age group now spends 31 percent of their income on debt payments, a 10 percent increase over the decade.

Source: ''Retiring in the Red: The Growth of Debt Among Older Americans''; *http://www.demos-usa.org/pub101.cfm*.

Other fact sheet sources include ''Deflate Your Rate,'' MASSPIRG, 2002, see *http://www.truthaboutcredit.org* and other reports by Demos. See *http://www.demos-usa.org/page38.cfm*.

Mr. AKAKA. I also ask unanimous consent that the text of the Credit Card Minimum Payment Warning Act be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I urge my colleagues to support this legislation that will empower consumers by providing them with detailed personalized information to assist them in making informed choices about their credit card use and repayment. This bill makes clear the adverse consequences of uninformed choices, such as making only minimum payments, and provides opportunities to locate assistance to eliminate credit card debt.

S. 2475

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 ''Credit Card Minimum Payment Warning Act''.

SEC. 2. ENHANCED CONSUMER DISCLOSURES REGARDING MINIMUM PAYMENTS.

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) Information regarding repayment of the outstanding balance of the consumer under the account, appearing in conspicuous type on the front of the first page of each such billing statement, and accompanied by an appropriate explanation, containing—

''(i) the words 'Minimum Payment Warning: Making only the minimum payment will increase the amount of interest that you pay and the time it will take to repay your outstanding balance.';

''(ii) the number of years and months (rounded to the nearest month) that it would take for the consumer to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments;

''(iii) the total cost to the consumer, shown as the sum of all principal and interest payments, and a breakdown of the total costs in interest and principal, of paying that balance in full if the consumer pays only the required minimum monthly payments, and if no further advances are made;

''(iv) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made; and

''(v) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision specifying a subsequent interest rate or applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then shall apply the adjusted interest rate, as specified in the contract. If the contract applies a formula that uses an index that varies over time, the value of such index on the date on which the disclosure is made shall be used in the application of the formula.''.

SEC. 3. ACCESS TO CREDIT COUNSELING AND DEBT MANAGEMENT INFORMATION.

(a) GUIDELINES REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission (in this section referred to as the ''Board'' and the ''Commission'', respectively) shall jointly, by rule, regulation, or order, issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for purposes of the disclosures required under section 127(b)(11) of the Truth in Lending Act, as added by this Act.

(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number include only those agencies approved by the Board and the Commission as meeting the criteria under this section.

(b) CRITERIA.—The Board and the Commission shall only approve a nonprofit budget and credit counseling agency for purposes of this section that—

(1) demonstrates that it will provide qualified counselors, maintain adequate provision

for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides;

(2) at a minimum—

(A) is registered as a nonprofit entity under section 501(c) of the Internal Revenue Code of 1986;

(B) has a board of directors, the majority of the members of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(C) if a fee is charged for counseling services, charges a reasonable and fair fee, and provides services without regard to ability to pay the fee;

(D) provides for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(E) provides full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, any costs of such program that will be paid by the client, and how such costs will be paid;

(F) provides adequate counseling with respect to the credit problems of the client, including an analysis of the current financial condition of the client, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(G) provides trained counselors who—

(i) receive no commissions or bonuses based on the outcome of the counseling services provided;

(ii) have adequate experience; and

(iii) have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (F);

(H) demonstrates adequate experience and background in providing credit counseling;

(I) has adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan; and

(J) is accredited by an independent, nationally recognized accrediting organization.

Mr. DURBIN. Mr. President, I am delighted to be working with my friend the distinguished Senator from Hawaii, Senator AKAKA, to introduce a measure that provides a simple yet vital commodity to users of credit cards. The commodity I speak of: information.

The modern-day credit-reporting system has benefitted consumers by making affordable credit more widely available than ever before, and the spread of credit cards is an important part of this ''credit revolution.'' Along with this revolution in credit availability, however, we need a revolution in consumers' ability to manage their credit. Two facts provide a quick and simple snapshot of our progress in that regard. In the fourth quarter of 2003, the number of delinquencies on regular consumer loans went down. That same quarter, the number of past-due credit card accounts hit an all-time high. Clearly, an increasing number of credit card holders need to do a better job of responsibility managing their credit exposure.

This bill is designed to help them to do just that by providing that vital commodity, information. It would require credit card statements to provide information that will help consumers understand the relationships among their total balance, the minimum payment due, and the accumulation of interest over time. Specifically, this bill would require that statements provide the following information: the amount of time it would take to pay off the total balance if just minimum payments are made each month; the total cost to the consumer that would be incurred over that time period, broken into interest and principle; the payment amount that would be necessary each month to pay off the total balance in three years; and a toll-free telephone number consumers could call to get a referral to a legitimate, accredited, non-profit credit counseling agency.

We would like to think that the credit card companies would be glad to provide whatever information their consumers needed to responsibly manage their credit. The fact of the matter is, though, that they do not provide the information I just described, and chances are they will not begin doing so on their own initiative. These numbers are not all that hard to calculate. A few lines of computer code is all it would take. And yet provision of these three simple numbers would provide a huge payback by helping credit card users quickly and easily get a clearer understanding of the size of their balance and what the consequences will be for them—in terms of time and financial cost—of carrying that balance.

Let me be extra clear about one thing: This bill will help markets for credit work better. As Adam Smith told us, the free flow of information is an absolute prerequisite of an efficient market. For markets to work, buyers must know and understand what they are buying. When our bill becomes law, credit card holders—who are simply buyers of credit in the marketplace—will have a better understanding of what exactly they are buying into, for the long term. The result can only be that the credit markets will better serve us, and that our households and our Nation will be on stronger financial footing.

I thank my friend Senator AKAKA for working with me on this important measure. I am also delighted that my friends Senator SCHUMER AND SENATOR LEAHY have joined us as original cosponsors. I urge the rest of my colleagues to join us by cosponsoring this bill.

By Mr. KYL (for himself, Mr. MILLER, Mr. CORNYN, Mr. SESSIONS, Mr. CHAMBLISS, Mr. GRAHAM of South Carolina, Mr. NICKLES, Mr. MCCONNELL, Mr. INHOFE, and Mr. ROBERTS):

S. 2476. A bill to amend the USA PATRIOT Act to repeal the sunsets; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce a bill that would repeal §224 of the USA Patriot Act. Section 224 provides that 16 different parts of the Patriot Act ''shall cease to have effect on December 31, 2005.'' The authorities subject to this sunset include some of the most important provisions of the Act. They are sections 201, wiretapping in terrorism cases; 202, wiretapping in computer fraud and abuse felony case; 203(b) sharing wiretap information; 203(d), sharing foreign intelligence information; 204, Foreign Intelligence Surveillance Act (FISA) pen register/trap and trace exceptions; 206, roving FISA wiretaps; 207, duration of FISA surveillance of non-United States persons who are agents of a foreign power; 209, seizure of voice-mail messages pursuant to warrants; 212, emergency disclosure of electronic surveillance; 214, FISA pen register/ trap and trace authority; 215, FISA access to tangible items; 217, interception of computer trespasser communications; 218, purpose for FISA orders; 220, nationwide service of search warrants for electronic evidence; 223, civil liability and discipline for privacy violations; and 225, provider immunity for FISA wiretap assistance.

Rather than praise the Patriot Act myself, I would like to quote others who have done so. First, I would note that the President has called on Congress to renew all parts of the Patriot Act that are scheduled to expire next year. As he has emphasized, ''to abandon the Patriot Act would deprive law enforcement and intelligence officers of needed tools in the war on terror, and demonstrate willful blindness to a continuing threat.''

FBI Director Robert Mueller, in a hearing before the Judiciary Committee yesterday, also voiced strong support for renewing the Patriot Act. As he noted, ''for over two and a half years, the PATRIOT Act has proved extraordinarily beneficial in the war on terrorism and has changed the way the FBI does business. Many of our counterterrorism successes, in fact, are the direct results of provisions included in the Act, a number of which are scheduled to 'sunset' at the end of next year. I strongly believe it is vital to our national security to keep each of these provisions intact.''

Similarly, in an April 14 field hearing before the Judiciary Committee, Deputy Attorney General James Comey stated that the Patriot Act ''has made us immeasurably safer.'' He also responded to the allegation, occasionally made by some critics, that the Patriot Act was passed too quickly. He replied that ''the USA Patriot Act was not rushed, it actually came 10 years too late.''

The importance of the Patriot Act to American security also has drawn the attention of the 9/11 Commission. Former New Jersey Governor Thomas Kean has noted that the Commission has had ''witness after witness tell us that the Patriot Act has been very, very helpful, and if the Patriot Act, or portions of it, had been in place before 9/11, that would have been very helpful.''

This praise has not been limited to the Republicans who have participated in the Commission's proceedings. Former Attorney General Janet Reno, for example, testified before the Commission that ''everything that's been done in the Patriot Act has been helpful.''

Nor is President Bush alone among the major candidates for President this year in hailing the importance of the Patriot Act. Indeed, his principal rival for the office, Senator KERRY, recently claimed that he would go even further than the President. According to an April 25 story in the Los Angeles Times, Senator KERRY's spokesman insists that ''it is the challenger, not the president, who brings the most muscular view of the Patriot Act into the race.'' Senator KERRY's presidential campaign website even includes a ''Plan to Restore American Security,'' which lists as its number-one priority to ''improve intelligence capabilities.'' Senator KERRY states that he ''understands that intelligence information is the key to disrupting and dismantling terrorist organizations and that we need to improve our intelligence capabilities, both domestically and internationally, in order to win the war on global terrorism.''

One reform implemented by the Patriot Act that Attorney General Reno and others have particularly emphasized is its authorization for information sharing. Because this part of the Patriot Act is often praised but infrequently described in detail, I would like to quote the following accounts of pre-Patriot barriers to information sharing, and of the investigative successes that the removal of those barriers has made possible.

The FISA Court of Review decision upholding the Patriot Act's authorization for information sharing, In re: *Sealed Case*, 310 F.3d 717,

F.I.S. CT. REV. 2002, DESCRIBES THE ORIGINS OF THE PRE-PATRIOT BARRIERS:

Apparently to avoid running afoul of the primary purpose test used by some courts, the 1995 [Attorney General] Procedures [(''Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations'')] limited contacts between the FBI and the Criminal Division in cases where FISA surveillance or searches were being conducted by the FBI for foreign intelligence (FI) or foreign counterintelligence (FCI) purposes. The procedures state that ''the FBI and Criminal Division should ensure that advice intended to preserve the option of a criminal prosecution does not inadvertently result in either the fact or the appearance of the Criminal Division's directing or controlling the FI or FCI investigation toward law enforcement objectives.'' Although these procedures provided for significant information sharing and coordination between criminal and FI or FCI investigations, based at least in part on the ''directing or controlling'' language, they eventually came to be narrowly interpreted within the Department of Justice, and most particularly by OIPR, as requiring OIPR to act as a ''wall'' to prevent the FBI intelligence officials from communicating with the Criminal Division regarding ongoing FI or FCI investigations. Thus, the focus became the nature of the underlying investigation, rather than the general purpose of the surveillance. Once prosecution of the target was being considered, the procedures, as interpreted by OIPR in light of the case law, prevented the Criminal Division from providing any meaningful advice to the FBI.''

In re: *Sealed Case*, 310 F.3d at 727–28 citations omitted.

FBI Director Mueller, in his testimony yesterday, provided a concrete account of the impact that these information-sharing barriers had on intelligence investigations:

Prior to September 11, an [FBI] Agent investigating the intelligence side of a terrorism case was barred from discussing the case with an Agent across the hall who was working the criminal side of that same investigation. For instance, if a court-ordered criminal wiretap turned up intelligence information, the criminal investigator could not share that information with the intelligence investigator—he could not even suggest that the intelligence investigator should seek a wiretap to collect the information for himself. If the criminal investigator served a grand jury subpoena to a suspect's bank, he could not divulge any information found in those bank records to the intelligence investigator. Instead, the intelligence investigator would have to issue a National Security Letter in order to procure that same information.

Chicago U.S. Attorney Patrick Fitzgerald, in an October 21, 2003 hearing before the Senate Judiciary Committee, described how these pre-Patriot information-sharing limits undercut one potentially vital terror investigation. Mr. Fitzgerald discussed the grand-jury testimony of Wadih el Hage, a key member of the Al Qaeda cell in Nairobi who, in September 1997, was apprehended while changing flights in New York City. Federal prosecutors subpoenaed el Hage from the airport to testify before a Federal grand jury in Manhattan. Mr. Fitzgerald described how el Hage:

[P]rovided some information of potential use to the intelligence community—including potential leads as to the location of his confederate Harun and the location of Harun's files in Kenya. Unfortunately, as el Hage left the grand-jury room, we knew that * * * [because of pre-Patriot restrictions] we would not be permitted to share the grand-jury information with the intelligence community. * * * Fortunately, we found a way to address the problem that in most other cases would not work. Upon request, el Hage voluntarily agreed to be debriefed by an FBI agent outside the grand-jury room * * *. El Hage then repeated the essence of what he told the grand jury to the FBI agent, including his purported leads to on the location of Harun and his files. The FBI then lawfully shared the information with the intelligence community. In essence, we solved the problem by obtaining the consent of a since-convicted terrorist. We do not want to have to rely on the consent of al Qaeda terrorists to address the gaps in our national security.

Mr. Fitzgerald went on to describe how, in August 1998, the American Embassy in Nairobi was bombed by al Qaeda. Investigators quickly learned that el Hage's associate Harun was responsible. In this particular case, investigators had been able to work around information-sharing limits because of an al Qaeda terrorist's willingness to be interviewed by the FBI, and even with this information U.S. agents were not able to stop a terrorist attack. The pre-Patriot limits were not a decisive factor in blocking U.S. intelligence agents from preventing the Kenya bombing. But they could have been. As U.S. Attorney Fitzgerald concluded, ''we should not have to wait for people to die with no explanation [other] than that interpretations of the law blocked the sharing of specific information that probably [c]ould have saved [American lives].''

As Attorney General Reno noted in her testimony before the 9/11 Commission, ''these restrictions [on information sharing] have now been eliminated as part of the Patriot Act.'' Director Mueller, in his Judiciary Committee testimony yesterday, described the impact of this change:

The removal of the ''wall'' has allowed government investigators to share information freely. Now, criminal investigative information that contains foreign intelligence or counterintelligence, including grand jury and wiretap information, can be shared with intelligence officials. This increased ability to share information has disrupted terrorist operations in their early stages—such as the successful dismantling of the ''Portland Seven'' terror cell—and has led to numerous arrests, prosecutions, and convictions in terrorism cases.

In essence, prior to September 11th, criminal and intelligence investigators were attempting to put together a complex jigsaw puzzle at separate tables. The Patriot Act has fundamentally changed the way we do business. Today, those investigators sit at the same table and work together on one team. They share leads. They fuse information. Instead of conducting parallel investigations, they are fully integrated into one joint investigation.

These Patriot Act changes can directly be credited with some important recent successes in the war on terror. For example, in February 2003, Federal prosecutors arrested and indicted Sami Al-Arian and seven other suspected terrorists. The 50-count indictment indicated that Al-Arian was the financial director and the North American leader of Palestinian Islamic Jihad, a terrorist group that has killed more than 100 people in and around Israel, including two Americans. Al-Arian wired money to groups in Israel that paid money to the families of terrorists who carried out suicide bombings. He also founded three organizations in Florida which, among other things, drafted final wills and testaments for suicide bombers.

Incredibly, through much of the 1990s, Al-Arian was secretly watched by two different sets of U.S. investigators. The FBI had been conducting a criminal probe of Al-Arian since 1995. Meanwhile, intelligence agents had monitored Al-Arian since the late 1980s. Because of pre-Patriot restrictions, the two sets of investigators were not able to share information and were not aware of the full extent of each other's investigations. It was only after the FISA Court of Review upheld Patriot

Act §203's information-sharing provisions in November 2002 that intelligence officials were able to show their files to prosecutors. Several months after this Patriot provision was upheld and made effective, prosecutors arrested and indicted Al-Arian and put an end to his activities.

Of course, the provisions of the Patriot Act subject to the §224 sunset include much more than just the three provisions that facilitate information sharing. Although I will not discuss all of those provisions in detail today—some of which have never been controversial—I would like to discuss one provision that has been a particular focus of attacks on the Patriot Act.

Section 215 of the Patriot Act allows the FBI to seek an order for ''the production of tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information.'' FISA defines ''foreign intelligence'' as information relating to foreign espionage, foreign sabotage, or international terrorism, or information respecting a foreign power that relates to U.S. national security or foreign policy. Thus §215 cannot be used to investigate ordinary crimes or even domestic terrorism. And in every case, a §215 order must be approved by a judge.

Alhough §215 is basically a form of subpoena authority, like that allowed for numerous other types of investigation indeed, it is more tightly restricted than other types of subpoenas because it must be pre-approved by a judge §215 has been heavily targeted by Patriot Act critics. Chief among their complaints is that §215 could be used to obtain records from bookstores or libraries. Some of these critics have even alleged that §215 would allow the FBI to investigate someone simply because of the books that he borrows from a library.

Section 215 could in fact be used to obtain library records, though neither §215 nor any other provision of the Patriot Act specifically mentions libraries or is directed at libraries. Nevertheless, §215 does authorize court orders to produce tangible records—which could include library records.

Where the critics are wrong is in suggesting that a §215 order could be obtained because of the books that someone reads or the websites that he visits. §215 allows no such thing. Instead, §215 allows an order to obtain ''tangible things'' as part of an investigation to ''obtain foreign intelligence information''—information relating to foreign espionage or terrorism or relating to a foreign government or group and national security. By requiring a judge to approve such an order, §215 ensures that these orders will not be used for an improper purpose. And as an added protection against abuse, the Patriot Act also requires that the FBI ''fully inform'' the House and Senate Intelligence Committees on all use of §215 every six months. These checks and safeguards leave FBI agents little room for the types of witch hunts that Patriot Act critics conjure up.

Further, it bears mention that federal investigators already use an authority very similar to §215 the grand jury subpoena—to obtain bookstore records. As Deputy AG Comey recently emphasized in a letter that he submitted to the editor of the New York Times, ''orders for records under [§215] are more closely scrutinized and more difficult to obtain than ordinary grand jury supoenas, which can require production of the very same records, but without judicial approval.'' Similarly, in a September 11, 2003 editorial, ''Patriot (Act) Games,'' the Washington Post noted that investigative authority to review library records ''existed prior to the Patriot Act; the law extends it to national security investigations, which isn't unreasonable.''

Finally, I would emphasize that an intelligence or criminal investigation may have good and legitimate reasons for extending to library or bookstore records. For example, in a recent domestic terrorism case, Federal investigators sought to prove that a suspected bomber had built a particularly unusual detonator that had been used in several bombings. The investigators used a grand-jury subpoena to show that the suspect had purchased a book giving instructions on how to build such a detonator.

Moreover, we should not forget that terrorists and spies historically have used libraries to plan and carry out activities that threaten U.S. national security. We know, for example, that some terrorists have used computers at public libraries to use the internet and communicate by email. It would be unwise to place libraries and bookstores beyond the scope of anti-terror investigations.

Andrew McCarthy, a former federal prosecutor who led the 1995 terrorism case against Sheik Omar Abdel Rahman, recently elaborated on this point in a November 13, 2003 article in National Review Online, ''Patriot Act Under Siege'':

> [H]ard experience—won in the course of a string of terrorism trials since 1993—instructs us that it would be folly to preclude the government a priori from access to any broad categories of business record. Reading material, we now know, can be highly relevant in terrorism cases. People who build bombs tend to have books and pamphlets on bomb making. Terrorist leaders often possess literature announcing the animating principles of their organizations in a tone tailored to potential recruits. This type of evidence is a staple of virtually every terrorism investigation—both for what it suggests on its face and for the forensic significance of whose fingerprints may be on it. No one is convicted for having it—jurors are Americans too, and they'd not long stand for the odious notion that one should be imprisoned for the mere act of thinking.
>
> When a defendant pleads ''not guilty,'' however, he is saying: ''I put the government to its proof on every element of the crime, including that I acted with criminal purport.'' Prosecutors must establish beyond a reasonable doubt not only that the terrorist engaged in acts but did so intending execrable consequences. If an accused says the precursor components he covertly amassed were for innocent use, is it not relevant that he has just borrowed a book that covers explosives manufacture? If he claims unfamiliarity with the tenets of violent jihad, should a jury be barred from learning that his paws have yellowed numerous publications on the subject? Such evidence was standard fare throughout Janet Reno's tenure as attorney general—and rightly so.

In his testimony yesterday, FBI Director Mueller also described the importance to antiterror investigations of some of the other Patriot Act authorities subject to expire under §224. For example, Director Mueller noted that:

> The PATRIOT Act gave federal judges the authority to issue search warrants that are valid outside the issuing judge's district in terrorism investigations. In the past, a court could only issue a search warrant for premises within the same judicial district—yet our investigations of terrorist networks often span multiple districts. The PATRIOT Act streamlined this process, making it possible for judges in districts where activities related to terrorism may have occurred to issue search warrants applicable outside their immediate districts.
>
> In addition, the PATRIOT Act permits similar search warrants for electronic evidence such as email. In the past, for example, if an Agent in one district needed to obtain a search warrant for a subject's email account, but the Internet service provider (ISP) was located in another district, he or she would have to contact an AUSA and Agent in the second district, brief them on the details of the investigation, and ask them to appear before a judge to obtain a search warrant—simply because the ISP was physically based in another district. Thanks to the PATRIOT Act, this frustrating and time-consuming process can be averted without reducing judicial oversight. Today, a judge anywhere in the U.S. can issue a search warrant for a subject's email, no matter where the ISP is based.
>
> [Further], the PATRIOT Act updated the law to match current technology, so that we no longer have to fight a 21st-century battle with antiquated weapons. Terrorists exploit modern technology such as the Internet and cell phones to conduct and conceal their activities. The PATRIOT Act leveled the playing field, allowing investigators to adapt to modern techniques. For example, the PATRIOT Act clarified our ability to use court-ordered pen registers and trap-and-trace devices to track Internet communications. The Act also enabled us to seek court-approved roving wiretaps, which allow investigators to conduct electronic surveillance on a particular suspect, not a particular telephone this allows them to continuously monitor subjects without having to return to the court.

All of the authorities described by Director Mueller obviously are critical to antiterrorism investigations—and all will expire next year unless Congress acts to repeal §224.

In responding to some of the accusations of Patriot Act critics, I do not mean to dismiss the importance of either civil liberties or of independent oversight of the federal government. I would simply emphasize that the Patriot Act is carefully crafted legislation that both guarantees protection for civil liberties and is subject to ample oversight. I would note, in this vein, that in a report filed in January

2004, Department of Justice Inspector General Glenn A. Fine—an appointee of President Clinton described the results of his investigation of all recent civil-rights and civil-liberties complaints received by the Justice Department. The Inspector General found no incidents in which the Patriot Act was used to abuse civil rights or civil liberties.

The Patriot Act's provisions for independent oversight of the new authorities created by the Act were described in detail by Deputy AG Comey in his April 14, 2004 testimony before the Judiciary Committee. Mr. Comey noted:

First, the USA PATRIOT Act preserves the historic role of courts by ensuring that the vital role of judicial oversight is not diminished. For example, the provision for delayed notice for search warrants requires judicial approval. In addition, under the Act, investigators cannot obtain a FISA pen register unless they apply for and receive permission from federal court. The USA PATRIOT Act actually goes farther to protect privacy than that Constitution requires, as the Supreme Court has long held that law enforcement authorities are not constitutionally required to obtain court approval before installing a pen register. Furthermore, a court order is required to compel production of business records, in national security investigations.

Second, the USA PATRIOT Act respects important congressional oversight by placing new reporting requirements on the Department. Every six months, the Attorney General is required to report to Congress the number of times section 215 has been utilized, as well as to inform Congress concerning all electronic surveillance under the Foreign Intelligence Surveillance Act. Under section 1001 of the USA PATRIOT Act, Congress receives a semiannual report from the Department's Inspector General detailing any abuses of civil rights and civil liberties by employees or officials of the Department of Justice. It is important to point out that in the Inspector General's most recent report to Congress, he reported that his office has received no complaints alleging misconduct by Department employees related to the use of a substantive provision of the USA PATRIOT Act.

Finally, the USA PATRIOT Act fosters public oversight of the Department. In addition to the role of the Inspector General to review complaints alleging abuses of civil liberties and civil rights, the Act provides a cause of action for individuals aggrieved by any willful violation of Title III or certain sections of FISA. To date, no civil actions have been filed under this provision.

The United States has had some important successes in the war on terror so far. Worldwide, more than half of al Qaeda's senior leadership has been captured or killed. More than 3,000 al Qaeda operatives have been incapacitated. Within the United States, 4 different terrorist cells have been broken up—cells located in Buffalo, Detroit, Seattle, and Portland. 284 individuals have been criminally charged to date, and 149 individuals have been convicted or pleaded guilty, including: shoe bomber Richard Reid, six members of the Buffalo terrorist cell, two members of the Detroit cell, Ohio truck driver Iyman Faris, and U.S.-born Taliban John Walker Lindh.

Patriot-aided criminal prosecutions also have contributed to U.S. intelligence efforts to learn more about terrorist organizations. Facing long prison terms, some apprehended terrorist have chosen to cooperate with the U.S. government. So far, the Justice Department has obtained plea agreements from 15 individuals who are now cooperating with terror investigations. One individual has given the U.S. information about weapons stored by terrorists in the United States. Another cooperating terrorist has given U.S. investigators information about locations in the U.S. that are being scouted or cased for potential attacks by al Qaeda.

The Patriot Act has played a major role in what U.S. antiterror investigations have accomplished so far. And it is clear that we will continue to need the authorities created by the Patriot Act into the foreseeable future. For these reasons, I am pleased to introduce today with my colleagues a bill to repeal §224 and make the Patriot Act permanent.

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

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

S. 2476

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

SECTION 1. REPEAL OF USA PATRIOT ACT SUNSETS.

Section 224 of the USA PATRIOT Act (18 U.S.C. 2510 note) is repealed.

By Mr. REED (for himself, Ms. COLLINS, Mr. KENNEDY, and Mrs. MURRAY):

S. 2477. A bill to amend the Higher Education Act of 1965 to expand college access and increase college persistence, to simplify the process of applying for student assistance, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce bipartisan legislation to expand access to college. I am pleased to be joined in this effort by Senators COLLINS, KENNEDY, and MURRAY.

In a year in which we are slated to reauthorize the Higher Education Act, we have had only a few hearings on the reauthorization in the HELP Committee. In these hearings and the discussions ongoing in the other body, there has been scant mention of our insufficient investment in need-based financial aid. Instead, the discussions have been dominated by proposals that will hurt, rather than help, the neediest students.

This is troubling, particularly as more and more students are being priced out of college, which shortchanges their future and that of our nation. Economic security is a necessity not just for the wealthy, but for every American. And the key to economic security is education.

An individual's climb up the economic ladder is directly related to the amount of education he or she receives. Given the strong correlation among educational attainment, employment, and wages, the cost of not going to college is just too high.

Almost a third of the growth in employment over the next decade is expected to occur in occupations that require at least a bachelor's degree. College graduates, on average, earn 60 percent more than high school graduates, while an individual with a professional degree earns almost four times what a high school graduate earns.

And yet, too many college students are under-prepared, underfinanced, and overworked. Those who make it through are saddled by nearly insurmountable loan debt. But many more cannot afford the cost of college at all.

Even though there have been gains due to the Higher Education Act, the current approach to student aid isn't alleviating the gaps between our lowest and highest income students nor is it addressing the gaps between the aid low-income students receive and the actual cost of attendance.

7 times as many students from high-income families 48 percent graduate from college by age 24 as students from low-income families 7 percent. Low-income, college-qualified high school graduates have an annual ''unmet need'' of nearly $4,000 in college expenses. Without drastic increases in need-based aid, over the next decade, according to a report by the Advisory Committee on Student Financial Assistance, 4.4 million low- and moderate-income college qualified high school graduates will not be able to pursue a four year degree full time and 2 million will not go to college at all.

A combination of factors has arisen to create this unfortunate situation, chief among them a decline in the purchasing power of the Pell Grant and sharp increases in the cost of college.

My predecessor, Senator Claiborne Pell, established what is now known as the Pell Grant in order to ensure higher education wasn't an ''unachievable dream.'' Almost one quarter of undergraduate students from colleges and universities nationwide receive a Pell Grant. It is the single largest source of grant aid for higher education funded by the Federal government.

Unfortunately, the Pell Grant's purchasing power has plummeted due to the slow growth in funding and the rapid rise of college prices. In the late 70s, the maximum grant covered 77 percent of costs at a public four-year institution. Today, the maximum Pell Grant of $4,050 covers only 41 percent.

On top of that, an estimated 60 percent of student aid is now in the form of loans and 40 percent in grants, a reversal of the distribution 20 years ago. Indeed, the average graduate has a student loan debt of $17,000. Pell Grant recipients, who represent the lowest income sectors of students, graduate with an average of $20,000 in student loan debt.

Over the last ten years, public and private 4-year college costs, tuition and fees, rose 47 percent and 42 percent, respectively, after adjusting for inflation, which is a more rapid growth rate than consumer prices. Over the last three years, since President Bush entered office, tuition has increased by 28 percent on average, even after inflation. Students have felt the bite as states have drastically cut funding for public colleges.

There is a further convergence of economic and demographic factors. In 2008, the largest number of students in our history will graduate from high school. A high percentage of these students will be from low-income, minority families, who will need student aid. At the same time, our Nation will need replacement workers as aging, college-educated baby boomers begin to retire in increasing numbers.

This crisis calls out for action. It should be a national imperative to ensure an educated citizenry and a world class workforce. Our Nation cannot afford to lose out on the countless returns from a robust education investment.

The legislation we introduce today, the ACCESS, Accessing College through Comprehensive Early outreach, State partnerships, and Simplification, Act, seeks to set our Nation back on the course that Senator Pell sought when he authored the grants later named after him in 1972.

The ACCESS Act revitalizes the Leveraging Educational Assistance Partnership (LEAP) program, which was established over thirty years ago to encourage States to play a role in helping low-income students go to college. Without this important, although extremely modest, Federal incentive, many States would never have established need-based grant programs and many States would not continue to maintain such programs.

Recognizing that LEAP can do even more to address the barriers to college access and persistence, the ACCESS Act forges a new Federal incentive for states—via higher levels of Federal match—to spur greater investments by states, colleges, businesses, and philanthropies in need-based grants for low-income students. At a time when public higher education is bearing the brunt of the fiscal crises confronting our States, we need to do more to encourage States to help low-income students attend college.

We want States to focus their energies on enhancing coordination and cohesion among Federal, State, and local programs and efforts of colleges, philanthropies, and businesses, with the goal of generating new investments in need-based aid sufficient to provide low-income students with an access and persistence grant to fill the gap in aid they face. All too often successful middle school students give up the dream of college because they think there is no way they can ever afford college. The ACCESS Act also requires States to notify low-income students beginning in middle school of their potential eligibility for student financial aid and encourages increased participation in early intervention, mentoring, and outreach programs.

The legislation is modeled after initiatives like the Rhode Island Children's Crusade in my home state and Indiana's 21st Century Scholars Program. A Lumina Foundation evaluation found that 21st Century Scholars—low-income students who receive an early notification of assistance, early intervention and support, and scholarships equivalent to the cost of in-state college tuition—were nearly 5 times more likely than non-participants to enroll in college. Indeed, successful college access programs are those that offer early intervention and mentoring services coupled with early information about estimated financial aid awards and adequate grant funding to make the dream of higher education a reality. Students participating in such programs are more financially and academically prepared, and thus more likely to enroll in college and persist to degree completion.

Our legislation also simplifies the financial aid process for low-income students. It allows more students to qualify for an Automatic-Zero Expected Family Contribution, aligning its eligibility with the standards for other Federal means-tested programs, like free school lunch, SSI, and Food Stamps. Students and families should not have to prove over and over again that they are low-income, and asking students to fill out lengthy forms when they already meet the eligibility level for Pell Grants is a burden we should ease.

In a similar vein, the legislation establishes a short, paper FAFSA-EZ application form for students qualifying for the auto-zero along with a tailored web-based system and a free telefile system for students without Internet access.

The ACCESS Act also expands college access for low-income students, in part by prohibiting a qualified education benefit, like education savings plans, from being considered as a student asset and by reducing the work penalty. The current income protection allowance levels are unrealistically low, creating a disincentive for students who work in order to pay college costs. I look forward to receiving further information on this and other problems addressed in the legislation when the Advisory Committee on Student Financial Assistance completes work on the congressionally mandated financial aid simplification study later this year.

We must act on this legislation and others to make sure that every student who works hard and plays by the rules gets the opportunity to live the American Dream.

I was pleased to work with the Advisory Committee on Student Financial Assistance, and a host of other higher education organizations and charitable foundations, including Scholarship America, on this legislation. I am also pleased that this legislation has the support of a range of higher education and student groups, including the American Association of Community Colleges, the American Association of State Colleges and Universities, the American Council on Education, the Association of American Universities, the Association of Jesuit Colleges and Universities, the Center for Law and Social Policy, the Council for Opportunity in Education, National Association for College Admission Counseling, the National Association of Independent Colleges and Universities, National Association of State Student Grant and Aid Programs, the National Association of State Universities and Land-Grant Colleges, the National Association of Student Financial Aid Administrators, the United Negro College Fund, and the United States Student Association.

I urge my colleagues to cosponsor this important legislation and work for its inclusion in the upcoming reauthorization of the Higher Education Act.

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. 2477

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 ''Accessing College through Comprehensive Early Outreach, State Partnerships, and Simplification Act''.

SEC. 2. GRANTS FOR ACCESS AND PERSISTENCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 415A(b) of the Higher Education Act of 1965 (20 U.S.C. 1070c(b)) is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this subpart $500,000,000 for fiscal year 2005, and such sums as may be necessary for each of the 5 succeeding fiscal years.

''(2) RESERVATION.—For any fiscal year for which the amount appropriated under paragraph (1) exceeds $30,000,000, the excess amount shall be available to carry out section 415E.''.

(b) APPLICATIONS FOR LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAMS.—Section 415C(b) of the Higher Education Act of 1965 (20 U.S.C. 1070c–2(b)) is amended—

(1) in paragraph (2), by striking ''$5,000'' and inserting ''$12,500'';

(2) in paragraph (9), by striking ''and'' after the semicolon;

(3) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(11) provides notification to eligible students that such grants are—

''(A) Leveraging Educational Assistance Partnership Grants; and

''(B) funded by the Federal Government and the State.''.

(c) GRANTS FOR ACCESS AND PERSISTENCE.—Section 415E of the Higher Education Act of 1965 (20 U.S.C. 1070c–3a) is amended to read as follows:

"SEC. 415E. GRANTS FOR ACCESS AND PERSISTENCE.

''(a) PURPOSE.—It is the purpose of this section to expand college access and increase college persistence by making allotments to States to enable the States to—

''(1) expand and enhance partnerships with institutions of higher education, early information and intervention, mentoring, or outreach programs, private corporations, philanthropic organizations, and other interested parties to carry out activities under this section and to provide coordination and cohesion among Federal, State, and local governmental and private efforts that provide financial assistance to help low-income students attend college;

''(2) provide need-based access and persistence grants to eligible low-income students;

''(3) provide early notification to low-income students of their eligibility for financial aid; and

''(4) encourage increased participation in early information and intervention, mentoring, or outreach programs.

''(b) ALLOTMENTS TO STATES.—

''(1) IN GENERAL.—

''(A) AUTHORIZATION.—From sums reserved under section 415A(b)(2) for each fiscal year, the Secretary shall make an allotment to each State that submits an application for an allotment in accordance with subsection (c) to enable the State to pay the Federal share of the cost of carrying out the activities under subsection (d).

''(B) DETERMINATION OF ALLOTMENT.—In making allotments under subparagraph (A), the Secretary shall consider the following:

''(i) CONTINUATION OF AWARD.—If a State continues to meet the specifications established in its application under subsection (c), the Secretary shall make an allotment to such State that is not less than the allotment made to such State for the previous fiscal year.

''(ii) PRIORITY.—The Secretary shall give priority in making allotments to States that meet the requirements under paragraph (2)(B)(iii).

''(2) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year may not exceed 66.66 percent.

''(B) DIFFERENT PERCENTAGES.—The Federal share under this section shall be determined in accordance with the following:

''(i) If a State applies for an allotment under this section in partnership with any number of degree granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, then the Federal share of the cost of carrying out the activities under subsection (d) shall be equal to 50 percent.

''(ii) If a State applies for an allotment under this section in partnership with any number of degree granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and philanthropic organizations that are located in, or who provide funding in, the State or private corporations that are located in, or who do business in, the State, then the Federal share of the cost of carrying out the activities under subsection (d) shall be equal to 57 percent.

''(iii) If a State applies for an allotment under this section in partnership with any number of degree granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, philanthropic organizations that are located in, or who provide funding in, the State, and private corporations that are located in, or who do business in, the State, then the Federal share of the cost of carrying out the activities under subsection (d) shall be equal to 66.66 percent.

''(c) APPLICATION FOR ALLOTMENT.—

''(1) IN GENERAL.—

''(A) SUBMISSION.—A State that desires to receive an allotment 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.

''(B) CONTENT.—An application submitted under subparagraph (A) shall include the following:

''(i) A description of the State's plan for using the allotted funds.

''(ii) Assurances that the State will provide matching funds, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the activities under subsection (d). The State shall specify the methods by which matching funds will be paid and include provisions designed to ensure that funds provided under this section will be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities under this title. A State that uses non-Federal funds to create or expand existing partnerships with nonprofit organizations or community-based organizations in which such organizations match State funds for student scholarships, may apply such matching funds from such organizations toward fulfilling the State's matching obligation under this clause.

''(iii) Assurances that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make such programs widely available.

''(iv) A description of the organizational structure that the State has in place to administer the activities under subsection (d), including a description of the system the State will use to track the participation of students who receive grants under this section to degree completion.

''(v) Assurances that the State has a method in place, such as acceptance of the automatic zero expected family contribution determination described in section 479, to identify eligible low-income students and award State grant aid to such students.

''(vi) Assurances that the State will provide notification to eligible low-income students that grants under this section are—

''(I) Leveraging Educational Assistance Partnership Grants; and

''(II) funded by the Federal Government and the State.

''(2) STATE AGENCY.—The State agency that submits an application for a State under section 415C(a) shall be the same State agency that submits an application under paragraph (1) for such State.

''(3) PARTNERSHIP.—

''(A) MANDATORY PARTNERS.—In applying for an allotment under this section, the State agency shall apply for the allotment in partnership with—

''(i) not less than 1 public and 1 private degree granting institution of higher education that are located in the State; and

''(ii) new or existing early information and intervention, mentoring, or outreach programs located in the State.

''(B) PERMISSIVE PARTNERS.—In addition to applying for an allotment under this section in partnership with degree granting institutions of higher education and early information and intervention, mentoring, or outreach programs, a State agency may also apply in partnership with philanthropic organizations that are located in, or who provide funding in, the State and private corporations that are located in, or who do business in, the State.

''(C) ROLES OF PARTNERS.—

''(i) STATE AGENCY.—A State agency that is in a partnership receiving an allotment under this section—

''(I) shall—

''(aa) serve as the primary administrative unit for the partnership;

''(bb) provide or coordinate matching funds, and coordinate activities among partners;

''(cc) encourage each institution of higher education in the State to participate in the partnership;

''(dd) make determinations and early notifications of assistance as described under subsection (d)(2); and

''(ee) annually report to the Secretary on the partnership's progress in meeting the purpose of this section; and

''(II) may provide early information and intervention, mentoring, or outreach programs.

''(ii) DEGREE GRANTING INSTITUTIONS OF HIGHER EDUCATION.—A degree granting institution of higher education that is in a partnership receiving an allotment under this section—

''(I) shall—

''(aa) recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency;

''(bb) provide support services to students who receive an access and persistence grant under this section and are enrolled at such institution; and

''(cc) assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

''(II) may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

''(iii) PROGRAMS.—An early information and intervention, mentoring, or outreach program that is in a partnership receiving an allotment under this section shall provide direct services, support, and information to participating students.

''(iv) PERMISSIVE PARTNERS.—A philanthropic organization or private corporation that is in a partnership receiving an allotment under this section shall provide funds for access and persistence grants for participating students, or provide funds or support for early information and intervention, mentoring, or outreach programs.

''(d) AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT OF PARTNERSHIP.—Each State receiving an allotment under this section shall use the funds to establish a partnership to award access and persistence grants to eligible low-income students in order to increase the amount of financial assistance such students receive under this subpart for undergraduate education expenses.

''(B) AMOUNT.—

''(i) PARTNERSHIPS WITH INSTITUTIONS SERVING LESS THAN A MAJORITY OF STUDENTS IN THE STATE.—

''(I) IN GENERAL.—In the case where a State receiving an allotment under this section is in a partnership described in clause (i) or (ii) of subsection (b)(2)(B), the amount of an access and persistence grant awarded by such State shall be not less than the amount that is equal to the average undergraduate tuition and mandatory fees at 4-year public institutions of higher education in the State where the student resides (less any other

Federal or State sponsored grant amount, college work study amount, and scholarship amount received by the student) and such amount shall be used toward the cost of attendance at an institution of higher education, located in the State, that is a partner in the partnership.

''(II) COST OF ATTENDANCE.—A State that has a program, apart from the partnership under this section, of providing eligible low-income students with grants that are equal to the average undergraduate tuition and mandatory fees at 4-year public institutions of higher education in the State, may increase the amount of access and persistence grants awarded by such State up to an amount that is equal to the average cost of attendance at 4-year public institutions of higher education in the State (less any other Federal or State sponsored grant amount, college work study amount, and scholarship amount received by the student).

''(ii) PARTNERSHIP WITH INSTITUTIONS SERVING THE MAJORITY OF STUDENTS IN THE STATE.—In the case where a State receiving an allotment under this section is in a partnership described in subsection (b)(2)(B)(iii), the amount of an access and persistence grant awarded by such State shall be up to an amount that is equal to the average cost of attendance at 4-year public institutions of higher education in the State where the student resides (less any other Federal or State sponsored grant amount, college work study amount, and scholarship amount received by the student) and such amount shall be used by the student to attend an institution of higher education, located in the State, that is a partner in the partnership.

''(2) EARLY NOTIFICATION.—

''(A) IN GENERAL.—Each State receiving an allotment under this section shall annually notify low-income students, such as students who are eligible to receive a free lunch under the school lunch program established under the Richard B. Russell National School Lunch Act, in grade 7 through grade 12 in the State of their potential eligibility for student financial assistance, including an access and persistence grant, to attend an institution of higher education.

''(B) CONTENT OF NOTICE.—The notification under subparagraph (A)—

''(i) shall include—

''(I) information about early information and intervention, mentoring, or outreach programs available to the student;

''(II) information that a student's candidacy for an access and persistence grant is enhanced through participation in an early information and intervention, mentoring, or outreach program;

''(III) an explanation that student and family eligibility and participation in other Federal means-tested programs may indicate eligibility for an access and persistence grant and other student aid programs;

''(IV) a nonbinding estimation of the total amount of financial aid a low-income student with a similar income level may expect to receive, including an estimation of the amount of an access and persistence grant and an estimation of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

''(V) an explanation that in order to be eligible for an access and persistence grant, at a minimum, a student shall meet the requirement under paragraph (3), graduate from secondary school, and enroll at an institution of higher education that is a partner in the partnership;

''(VI) information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of an access and persistence grant under this section; and

''(VII) instructions on how to apply for an access and persistence grant; and

''(ii) may include a disclaimer that access and persistence grant awards are contingent upon—

''(I) a determination of the student's financial eligibility at the time of the student's enrollment at an institution of higher education that is a partner in the partnership;

''(II) annual Federal and State appropriations; and

''(III) other aid received by the student at the time of the student's enrollment at an institution of higher education that is a partner in the partnership.

''(3) ELIGIBILITY.—In determining which students are eligible to receive access and persistence grants, the State shall ensure that each such student meets not less than 2 of the following criteria and give priority to students meeting all of the following criteria:

''(A) Has an expected family contribution equal to zero (as described in section 479) or a comparable alternative based upon the State's approved criteria in section 415C(b)(4).

''(B) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as recognized by the State agency administering activities under this section.

''(C) Has qualified for a free lunch, or at the State's discretion a reduced price lunch, under the school lunch program established under the Richard B. Russell National School Lunch Act.

''(D) Qualifies for the State's maximum undergraduate award, as authorized under section 415C(b).

''(E) Receives, or has received, an access and persistence grant under this section.

''(4) GRANT AWARD.—Once a student, including those who have received early notification under paragraph (2) from the State, applies for admission to an institution that is a partner in the partnership, files a Free Application for Federal Student Aid and any related existing State form, and is determined eligible by the State under paragraph (3), the State shall—

''(A) issue the student a preliminary access and persistence grant award certificate with tentative award amounts; and

''(B) inform the student that payment of the access and persistence grant award amounts is subject to certification of enrollment and award eligibility by the institution of higher education.

''(5) DURATION OF AWARD.—An eligible student that receives an access and persistence grant under this section shall receive such grant award for each year of such student's undergraduate education in which the student remains eligible for assistance under this title, including pursuant to section 484(c), and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to baccalaureate degree completion.

''(e) ADMINISTRATIVE COST ALLOWANCE.—A State that receives an allotment under this section may reserve not more than 3.5 percent of the funds made available annually through the allotment for State administrative functions required to carry out this section.

''(f) STATUTORY AND REGULATORY RELIEF FOR INSTITUTIONS OF HIGHER EDUCATION.—The Secretary may grant, upon the request of an institution of higher education that is in a partnership described in subsection (b)(2)(B)(iii) and that receives an allotment under this section, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

''(g) APPLICABILITY RULE.—The provisions of this subpart which are not inconsistent with this section shall apply to the program authorized by this section.

''(h) MAINTENANCE OF EFFORT REQUIREMENT.—Each State receiving an allotment under this section for a fiscal year shall provide the Secretary an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for the authorized activities described in subsection (d) for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for the activities for the second preceding fiscal year.

''(i) REPORTS.—Not later than 3 years after the date of enactment of the Accessing College through Comprehensive Early Outreach, State Partnerships, and Simplification Act, and annually thereafter, the Secretary shall submit a report describing the activities and the impact of the partnerships under this section to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.''.

(d) CONTINUATION AND TRANSITION.—During the 2-year period commencing on the date of enactment of this Act, the Secretary shall continue to award grants under section 415E of the Higher Education Act of 1965 (20 U.S.C. 1070c–3a), as such section existed on the day before the date of enactment of this Act, to States that choose to apply for grants under such predecessor section.

(e) IMPLEMENTATION AND EVALUATION.—Section 491(j) of the Higher Education Act of 1965 (20 U.S.C. 1098(j)) is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon; and

(2) by striking paragraph (5) and inserting the following:

''(5) not later than 6 months after the date of enactment of the Accessing College through Comprehensive Early Outreach, State Partnerships, and Simplification Act, advise the Secretary on means to implement the activities under section 415E, and the Advisory Committee shall continue to monitor, evaluate, and make recommendations on the progress of partnerships that receive allotments under such section; and''.

SEC. 3. SIMPLIFIED NEEDS TEST AND AUTOMATIC ZERO IMPROVEMENTS.

(a) SIMPLIFIED NEEDS TEST.—Section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking subparagraph (A)(i) and inserting the following:

''(i) the student's parents—

''(I) file, or are eligible to file, a form described in paragraph (3);

''(II) certify that they are not required to file an income tax return;

''(III) 1 of whom is a dislocated worker; or

''(IV) or the student received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) by striking subparagraph (B)(i) and inserting the following:

''(i) the student (and the student's spouse, if any)—

''(I) files, or is eligible to file, a form described in paragraph (3);

''(II) certifies that the student (and the student's spouse, if any) is not required to file an income tax return;

''(III) is a dislocated worker; or

''(IV) received benefits at some time during the previous 24-month period under a

means-tested Federal benefit program as defined under subsection (d); and''; and

(B) in paragraph (3), by striking ''A student or family files a form described in this subsection, or subsection (c), as the case may be, if the student or family, respectively, files'' and inserting ''In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking subparagraph (A) and inserting the following:

''(A) the student's parents—

''(i) file, or are eligible to file, a form described in subsection (b)(3);

''(ii) certify that they are not required to file an income tax return;

''(iii) 1 of whom is a dislocated worker; or

''(iv) or the student received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) the sum of the adjusted gross income of the parents is less than or equal to $25,000; or'';

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following:

''(A) the student (and the student's spouse, if any)—

''(i) files, or is eligible to file, a form described in subsection (b)(3);

''(ii) certifies that the student (and the student's spouse, if any) is not required to file an income tax return;

''(iii) is a dislocated worker; or

''(iv) received benefits at some time during the previous 24-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to $25,000.''; and

(C) by striking the flush matter at the end and inserting the following:

''The Secretary shall annually adjust the income level necessary to qualify an applicant for the zero expected family contribution. The income level shall be adjusted according to increases in the Consumer Price Index, as defined in section 478(f).''; and

(3) by adding at the end the following:

''(d) DEFINITIONS.—In this section:

''(1) DISLOCATED WORKER.—The term 'dislocated worker' has the same meaning given the term in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801).

''(2) MEANS-TESTED FEDERAL BENEFIT PROGRAM.—The term 'means-tested Federal benefit program' means a mandatory spending program of the Federal Government in which eligibility for the program's benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the individual or family seeking the benefit, and includes the supplemental security income program under title XVI of the Social Security Act, the food stamp program under the Food Stamp Act of 1977, and the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act.''.

(b) DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.—Section 479A(a) of the Higher Education Act of 1965 (20 U.S.C. 1087tt(a)) is amended in the third sentence by inserting ''a family member who is a dislocated worker (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)),'' after ''recent unemployment of a family member,''.

SEC. 4. IMPROVING PAPER AND ELECTRONIC FORMS.

(a) SIMPLIFIED NEEDS TEST.—Section 479(a) of the Higher Education Act of 1965 (20 U.S.C. 1087ss(a)) is amended by adding at the end the following:

''(3) SIMPLIFIED FORMS.—The Secretary shall make special efforts to notify families meeting the requirements of subsection (c) that such families may use the FAFSA–EZ or the simplified electronic application form established under section 483(a).''.

(b) COMMON FINANCIAL AID FORM DEVELOPMENT AND PROCESSING.—Section 483 of the Higher Education Act of 1965 (20 U.S.C. 1090) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1), (2), and (5);

(B) by redesignating paragraphs (3), (4), (6), and (7), as paragraphs (7), (8), (9), and (10), respectively;

(C) by inserting before paragraph (7), as redesignated by subparagraph (B), the following:

''(1) IN GENERAL.—The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance under parts A through E (other than subpart 4 of part A). These forms shall be made available to applicants in both paper and electronic formats and shall be referred to as the 'Free Application for Federal Student Aid'.

''(2) PAPER FORMAT.—

''(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in paper format to meet the requirements of paragraph (1). The Secretary shall develop a common paper form for applicants who do not meet the requirements of subparagraph (B).

''(B) FAFSA-EZ.—

''(i) IN GENERAL.—The Secretary shall develop and use a simplified paper application form, to be known as the 'FAFSA–EZ', to be used for applicants meeting the requirements of section 479(c).

''(ii) REDUCED DATA REQUIREMENTS.—The FAFSA–EZ shall permit an applicant to submit for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under section 479(c).

''(iii) STATE DATA.—The Secretary shall include on the FAFSA–EZ space for information that needs to be submitted from the applicant to be eligible for State financial assistance, as provided under paragraph (5), except the Secretary shall not include a State's data if that State does not permit its applicants for State assistance to use the FAFSA–EZ.

''(iv) FREE AVAILABILITY AND PROCESSING.—The provisions of paragraph (6) shall apply to the FAFSA–EZ, and the data collected by means of the FAFSA–EZ shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (7).

''(v) TESTING.—The Secretary shall conduct appropriate field testing on the FAFSA–EZ.

''(C) PHASING OUT THE PAPER FORM FOR STUDENTS WHO DO NOT MEET THE REQUIREMENTS OF THE AUTOMATIC ZERO EXPECTED FAMILY CONTRIBUTION.—

''(i) IN GENERAL.—The Secretary shall make all efforts to encourage all applicants to utilize the electronic forms described in paragraph (3).

''(ii) PHASEOUT OF FULL FAFSA.—Not later than award year 2009–2010, the Secretary shall phaseout the long paper form for applicants who do not qualify for the FAFSA–EZ.

''(iii) USE OF SAVINGS TO ADDRESS THE DIGITAL DIVIDE.—The Secretary shall utilize savings accrued by moving more applicants to the electronic forms to improve access to the electronic forms for applicants meeting the requirements of section 479(c).

''(3) ELECTRONIC FORMAT.—

''(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in electronic format to meet the requirements of paragraph (1). The Secretary shall develop a common electronic form for applicants who do not meet the requirements of subparagraph (B).

''(B) SIMPLIFIED APPLICATION: FAFSA ON THE WEB.—

''(i) IN GENERAL.—The Secretary shall develop and use a simplified electronic application form to be used by applicants meeting the requirements under subsection (b) or (c) of section 479.

''(ii) REDUCED DATA REQUIREMENTS.—The simplified electronic application form shall permit an applicant to submit for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 479.

''(iii) STATE DATA.—The Secretary shall include on the simplified electronic application form space for information that needs to be submitted from the applicant to be eligible for State financial assistance, as provided under paragraph (5), except the Secretary shall not include a State's data if that State does not permit its applicants for State assistance to use the simplified electronic application form.

''(iv) FREE AVAILABILITY AND PROCESSING.—The provisions of paragraph (6) shall apply to the simplified electronic application form, and the data collected by means of the simplified electronic application form shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (7).

''(v) TESTING.—The Secretary shall conduct appropriate field testing on the form developed under this subparagraph.

''(C) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the use of the form developed by the Secretary pursuant to this paragraph by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software providers, a consortium thereof, or such other entities as the Secretary may designate.

''(D) PRIVACY.—The Secretary shall ensure that data collection under this paragraph complies with section 552a of title 5, United States Code, and that any entity using the electronic version of the forms developed by the Secretary pursuant to this paragraph shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the form. Data collected by such electronic version of the form shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate. No data collected by such electronic version of the form shall be used for making final aid awards under this title until such data have been processed by the Secretary or a contractor or designee of the Secretary, except as may be permitted under this title.

''(E) SIGNATURE.—Notwithstanding any other provision of this Act, the Secretary may permit an electronic form to be submitted without a signature, if a signature is subsequently submitted by the applicant.

''(F) PERSONAL IDENTIFICATION NUMBERS AUTHORIZED.—The Secretary is authorized to assign to applicants personal identification numbers—

''(i) to enable the applicants to use such numbers in lieu of a signature for purposes of completing a form under this paragraph; and

''(ii) for any purpose determined by the Secretary to enable the Secretary to carry out this title.

''(4) REAPPLICATION.—

''(A) IN GENERAL.—The Secretary shall develop streamlined reapplication forms and processes, including both paper and electronic reapplication processes, consistent with the requirements of this subsection, for an applicant who applies for financial assistance under this title in the next succeeding academic year subsequent to the year in which such applicant first applied for financial assistance under this title.

''(B) UPDATED.—The Secretary shall determine, in cooperation with States, institutions of higher education, agencies and organizations involved in student financial assistance, the data elements that can be updated from the previous academic year's application.

''(C) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as limiting the authority of the Secretary to reduce the number of data elements required of reapplicants.

''(D) ZERO FAMILY CONTRIBUTION.—Applicants determined to have a zero family contribution pursuant to section 479(c) shall not be required to provide any financial data in a reapplication form, except that which is necessary to determine eligibility under such section.

''(5) STATE REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall include on the forms developed under this subsection, such State-specific nonfinancial data items as the Secretary determines are necessary to meet State requirements for need-based State aid. Such items shall be selected in consultation with States to assist in the awarding of State financial assistance in accordance with the terms of this subsection. The number of such data items shall not be less than the number included on the form on October 7, 1998, unless States notify the Secretary that they no longer require those data items for the distribution of State need-based aid.

''(B) ANNUAL REVIEW.—The Secretary shall conduct an annual review process to determine which nonfinancial data items the States require to award need-based State aid and other application requirements that the States may impose.

''(C) FEDERAL REGISTER NOTICE.—The Secretary shall publish on an annual basis a notice in the Federal Register requiring State agencies to inform the Secretary—

''(i) if they are unable to permit applicants to utilize the FAFSA–EZ or the simplified electronic application form; and

''(ii) of the State-specific nonfinancial data that the State agency requires for delivery of State need-based financial aid.

''(D) STATE NOTIFICATION TO THE SECRETARY.—

''(i) IN GENERAL.—Each State shall notify the Secretary whether it permits an applicant to file a form described in paragraph (2)(B) or (3)(B) for purposes of determining eligibility for State need-based grant aid.

''(ii) NO PERMISSION.—In the event that a State does not permit an applicant to file a form described in paragraph (2)(B) or (3)(B) for purposes of determining eligibility for State need-based grant aid—

''(I) the State shall notify the Secretary if it is not permitted to do so because of either State law or because of agency policy; and

''(II) the notification under subclause (I) shall include an estimate of the program cost to permit applicants to complete FAFSA–EZs and simplified electronic application forms.

''(iii) LACK OF NOTIFICATION BY THE STATE.—If a State does not notify the Secretary pursuant to clause (i), the Secretary shall—

''(I) permit residents of that State to complete a FAFSA–EZ or a simplified electronic application form; and

''(II) not require any resident of that State to complete any nonfinancial data previously required by that State.

''(E) RESTRICTION.—The Secretary shall not require applicants to complete any nonfinancial data or financial data that are not required by the applicant's State agency, except as may be required for applicants who use the common paper form.

''(6) CHARGES TO STUDENTS AND PARENTS FOR USE OF FORMS PROHIBITED.—The common financial reporting forms prescribed by the Secretary under this subsection shall be produced, distributed, and processed by the Secretary and no parent or student shall be charged a fee by the Secretary, a contractor, a third party servicer or private software provider, or any other public or private entity for the collection, processing, or delivery of financial aid through the use of such forms. The need and eligibility of a student for financial assistance under parts A through E (other than under subpart 4 of part A) may only be determined by using a form developed by the Secretary pursuant to this subsection. No student may receive assistance under parts A through E (other than under subpart 4 of part A), except by use of a form developed by the Secretary pursuant to this subsection. No data collected on a paper or electronic form, worksheet, or other document for which a fee is charged shall be used to complete the form prescribed under this subsection. No person, commercial entity, or other entity shall request, obtain, or utilize an applicant's Personal Identification Number for purposes of submitting an application on an applicant's behalf except State agencies that have entered into an agreement with the Secretary to streamline applications, eligible institutions, or programs under this title as permitted by the Secretary.'';

(2) by striking subsection (b) and inserting the following:

''(b) EARLY NOTIFICATION OF AID ELIGIBILITY.—

''(1) IN GENERAL.—The Secretary shall make every effort to provide students with early information about potential financial aid eligibility.

''(2) AVAILABILITY OF MEANS TO DETERMINE ELIGIBILITY.—

''(A) IN GENERAL.—The Secretary shall provide, in cooperation with States, institutions of higher education, agencies, and organizations involved in student financial assistance, both through a widely disseminated printed form and the Internet or other electronic means, a system for individuals to determine easily, by entering relevant data, approximately the amount of grant, work-study, and loan assistance for which an individual would be eligible under this title upon completion and verification of form under subsection (a).

''(B) DETERMINATION OF WHETHER TO USE SIMPLIFIED APPLICATION.—The system established under this paragraph shall also permit users to determine whether or not they may apply for aid using a FAFSA–EZ or a simplified electronic application form under subsection (a).

''(3) AVAILABILITY OF MEANS TO COMMUNICATE ELIGIBILITY.—

''(A) LOWER-INCOME STUDENTS.—The Secretary shall—

''(i) make special efforts to notify students who qualify for a free or reduced price lunch under the school lunch program established under the Richard B. Russell National School Lunch Act, benefits under the food stamp program under the Food Stamp Act of 1977, or benefits under such programs as the Secretary shall determine, of such students' potential eligibility for a maximum Federal Pell Grant under subpart 1 of part A; and

''(ii) disseminate informational materials regarding the linkage between eligibility for means-tested Federal benefit programs and eligibility for a Federal Pell Grant, as determined necessary by the Secretary.

''(B) MIDDLE SCHOOL STUDENTS.—The Secretary shall, in cooperation with States, middle schools, programs under this title that serve middle school students, and other cooperating independent outreach programs, make special efforts to notify middle school students of the availability of financial assistance under this title and of the approximate amounts of grant, work-study, and loan assistance an individual would be eligible for under this title.

''(C) SECONDARY SCHOOL STUDENTS.—The Secretary shall, in cooperation with States, secondary schools, programs under this title that serve secondary school students, and cooperating independent outreach programs, make special efforts to notify students in their junior year of secondary school the approximate amounts of grant, work-study, and loan assistance an individual would be eligible for under this title upon completion and verification of an application form under subsection (a).'';

(3) in subsection (c), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions'';

(4) by striking subsection (d); and

(5) by redesignating subsection (e) as subsection (d).

(c) TOLL-FREE APPLICATION AND INFORMATION.—Section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss), as amended by section 3, is further amended by adding at the end the following:

''(e) TOLL-FREE APPLICATION AND INFORMATION.—The Secretary shall contract for, or establish, and publicize a toll-free telephone service to provide an application mechanism and timely and accurate information to the general public. The information provided shall include specific instructions on completing the application form for assistance under this title. Such service shall also include a service accessible by telecommunications devices for the deaf (TDD's) and shall, in addition to the services provided for in the previous sentence, refer such students to the national clearinghouse on postsecondary education that is authorized under section 685(d)(2)(C) of the Individuals with Disabilities Education Act. Not later than 2 years after the date of enactment of the Accessing College through Comprehensive Early Outreach, State Partnerships, and Simplification Act, the Secretary shall test and implement a toll-free telephone-based application system to permit applicants to utilize the FAFSA–EZ or simplified electronic application form under section 483(a) over such system.''.

(d) MASTER CALENDAR.—Section 482(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1089) is amended to read as follows:

''(B) by March 1: proposed modifications and updates pursuant to sections 478 and 483(a)(5) published in the Federal Register;''.

SEC. 5. ALLOWANCE FOR STATE AND OTHER TAXES.

Section 478(g) of the Higher Education Act of 1965 (20 U.S.C. 1087rr(g)) is amended to read as follows:

''(g) STATE AND OTHER TAX ALLOWANCE.—For each award year after award year 2004–2005, the Secretary shall publish in the Federal Register a revised table of State and other tax allowances for the purpose of sections 475(c)(2), 475(g)(3), 476(b)(2), and 477(b)(2). The Secretary shall develop such revised table after review of the Department of the Treasury's Statistics of Income file and determination of the percentage of income that each State's taxes represent. Updates shall be phased in proportionately over a period of time equal to the number of years since the last update.''.

SEC. 6. SUPPORT FOR WORKING STUDENTS.

(a) DEPENDENT STUDENTS.—Section 475(g)(2)(D) of the Higher Education Act of 1965 (20 U.S.C. 1087oo(g)(2)(D)) is amended to read as follows:

''(D) $9,000;''.

(b) INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.—Section 476(b)(1)(A)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1087pp(b)(1)(A)(iv)) is amended to read as follows:

''(iv) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 478)—

''(I) $10,000 for single students;

''(II) $10,000 for married students where both are enrolled pursuant to subsection (a)(2); and

''(III) $13,000 for married students where 1 is enrolled pursuant to subsection (a)(2);''.

(c) INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.—Section 477(b)(4) of the Higher Education Act of 1965 (20 U.S.C. 1087qq(b)(4)) is amended to read as follows:

''(4) INCOME PROTECTION ALLOWANCE.—The income protection allowance is determined by the following table (or a successor table prescribed by the Secretary under section 478):

''Income Protection Allowance

Family Size	Number in College				
	1	2	3	4	5
2	$17,580	$15,230			
3	20,940	17,610	$16,260		
4	24,950	22,600	20,270	$17,930	
5	28,740	26,390	24,060	21,720	$19,390
6	32,950	30,610	28,280	25,940	23,610

NOTE: For each additional family member, add $3,280.
For each additional college student, subtract $2,330.''.

SEC. 7. TREATMENT OF PREPAYMENT AND SAVINGS PLANS UNDER STUDENT FINANCIAL AID NEEDS ANALYSIS.

(a) DEFINITION OF ASSETS.—Section 480(f) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(f)) is amended—

(1) in paragraph (1), by inserting ''qualified education benefits (except as provided in paragraph (3)),'' after ''tax shelters,''; and

(2) by adding at the end the following:

''(3) A qualified education benefit shall not be considered an asset of a student for purposes of section 475.

''(4) In this subsection, the term 'qualified education benefit' means—

''(A) a program that is described in clause (i) of section 529(b)(1)(A) of the Internal Revenue Code of 1986 and that meets the requirements of section 529(b)(1)(B) of such Code;

''(B) a State tuition program described in clause (ii) of section 529(b)(1)(A) of the Internal Revenue Code of 1986 that meets the requirements of section 529(b)(1)(B) of such Code; and

''(C) a Coverdell education savings account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986).''.

(b) DEFINITION OF OTHER FINANCIAL ASSISTANCE.—Section 480(j) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(j)) is amended—

(1) in the heading, by striking ''; TUITION PREPAYMENT PLANS';

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations of need under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk et seq.) for academic years beginning on or after July 1, 2005.

SEC. 8. ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE.

Section 491 of the Higher Education Act of 1965 (20 U.S.C. 1098), as amended by section 2, is further amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), by striking ''and'' after the semicolon;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(D) to provide knowledge and understanding of early intervention programs and make recommendations that will result in early awareness by low- and moderate-income students and families of their eligibility for assistance under this title, and, to the extent practicable, their eligibility for other forms of State and institutional need-based student assistance; and

''(E) to make recommendations that will expand and improve partnerships among the Federal Government, States, institutions, and private entities to increase the awareness and total amount of need-based student assistance available to low- and moderate-income students.'';

(2) in subsection (d)—

(A) in paragraph (6), by striking '', but nothing in this section shall authorize the committee to perform such studies, surveys, or analyses'';

(B) in paragraph (8), by striking ''and'' after the semicolon;

(C) by redesignating paragraph (9) as paragraph (10); and

(D) by inserting after paragraph (8) the following:

''(9) monitor the adequacy of total need-based aid available to low- and moderate-income students from all sources, assess the implications for access and persistence, and report those implications annually to Congress and the Secretary; and'';

(3) in subsection (j), by adding at the end the following:

''(6) monitor and assess implementation of improvements called for under this title, make recommendations to the Secretary that ensure the timely design, testing, and implementation of the improvements, and report annually to Congress and the Secretary on progress made toward simplifying overall delivery, reducing data elements and questions, incorporating the latest technology, aligning Federal, State, and institutional eligibility, enhancing partnerships, and improving early awareness of total student aid eligibility for low- and moderate-income students and families.''; and

(4) in subsection (k), by striking ''2004'' and inserting ''2010''.

By Ms. COLLINS (for herself, Mr. AKAKA, Mr. FITZGERALD, Mr. LIEBERMAN, and Mr. VOINOVICH):

S. 2479. A bill to amend chapter 84 of title 5, United States Code, to provide for Federal employees to make elections to make, modify, and terminate contributions to the Thrift Savings Fund at any time, and for other purposes; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, today, I am pleased to be joined by my colleagues, Senators AKAKA, FITZGERALD, LIEBERMAN, and VOINOVICH in introducing the Thrift Savings Plan Open Elections Act of 2004. This legislation would provide Federal employees with maximum flexibility to tailor their investment decisions by eliminating the current restrictions on when employee contributions to the Thrift Savings Plan can begin or be modified.

Since its inception in 1987, the Thrift Savings Plan has provided Federal employees with the opportunity to participate in a retirement savings plan similar to the 401(k) plans offered by many private companies. The open seasons were created to encourage Federal employees to contribute money toward their retirement. Open seasons were practical during the early years when the Thrift Savings Plan was just getting started and lacked the administrative capability to quickly enroll participants and to implement investment elections on a real-time basis. With the introduction of the automatic record-keeping system, however, the program has outgrown its existing framework.

Under current law, newly hired employees can sign up to contribute to the Thrift Savings Plan during an initial 60-day eligibility period. If an employee chooses not to make an election, he or she must wait until an open season to do so. Further, if an employee stops contributing to the Thrift Savings Plan outside of an open season, he or she must wait until the second open season after contributions stop before contributions can resume. These

restrictions can unfairly penalize employees and discourage their participation. But allowing employees to initiate, modify, or terminate contributions to the TSP in any period, provided the amount does not exceed existing limits for contributions, the legislation ensures that Federal employees' investment decisions will no longer be restricted by the open season requirement.

In testimony before the Congress, Andrew Saul, Chairman of the Federal Retirement Thrift Investment Board, stated that the Board supports the elimination of the open season requirement because it would expand participant access and simplify the administration of the Thrift Savings Plan. Jim Sauber, Chairman of the Employee Thrift Advisory Council, testified in March 2004 that eliminating the TSP open season is perhaps the single best way to reach the 13 percent of employees in the Federal Employees Retirement System who still do not make contributions to the TSP.

In addition to the support by the Federal Retirement Thrift Investment Board and the Employee Thrift Advisory Council, the legislation is supported by the American Federation of Government Employees, the National Treasury Employees Union, the National Association of Retired Federal Employees, the Federal Managers Association, and the Senior Executives Association.

I urge my colleagues to support this important legislation.

THRIFT SAVINGS PLAN OPEN ELECTIONS ACT OF 2004

Mr. AKAKA. Mr. President. I am delighted to join with Senator COLLINS and other colleagues on the Governmental Affairs Committee to introduce the Thrift Savings Plan Open Elections Act of 2004. Our bill will provide participants in the Thrift Savings Plan, TSP, significant flexibility in managing their TSP accounts.

Over the years, I have successfully offered legislation which has ensured that Federal employees enrolled in the Government's retirement savings plan enjoy the same opportunities afforded to employees in the private and public sectors, such as the ability to make additional contributions to the TSP for those over the age of 50 and immediate enrollment for new employees. This new bill would eliminate open seasons, which prohibit employees who choose not to contribute to wait until for a specific amount of time if they later decide to participate.

I am especially pleased that the legislation also includes a section devoted to enhancing financial literacy for Federal employees. As my colleagues know, I have long championed the need for expanded financial literacy for Americans of all ages and background who face increasingly complex financial decisions as members of the Nation's workforce, managers of their families' resources, and voting citizens.

Our bill directs the Federal Retirement Thrift Investment Board, FRTIB, which administers the TSP, to enhance the tools available to TSP participants so that they will be better able to understand, evaluate, and compare the financial products, services, and opportunities available from the Thrift Savings Plan. The measure also requires that as part of the retirement training offered by the Office of Personnel Management, OPM, that OPM, in consultation with the board, develop a retirement financial literacy and education strategy for Federal employees. I wish to commend both the thrift board and OPM for the work that has already been undertaken to increase financial literacy among Federal employees, including the recent OPM-sponsored financial literacy fairs.

As for all Americans, financial literacy education is essential for Federal employees to develop a base of knowledge so that they can participate effectively in the modern economy. We must find opportunities to get information to individuals at the appropriate times throughout their lives as their financial situations and needs change. I believe that the provisions in this bill will give Federal employees the tools needed to empower them to make informed decisions regarding their retirement and financial security.

I strongly urge my colleagues to cosponsor this legislation.

By Mr. GRASSLEY:

S. 2480. A bill to amend title 23, United States Code, to research and prevent drug impaired driving; to the Committee on Environment and Public Works.

Mr. GRASSLEY. Mr. President, every half hour, somewhere in this country somebody is killed as a result of an alcohol related traffic accident. This is a sobering statistic. Thanks in part to a massive national response, nearly 1.5 million people are arrested and taken off the road each year for driving under the influence of alcohol, undoubtedly saving lives. But, there is an equally dangerous and potentially devastating problem lurking on our Nation's highways that is going largely undetected.

In 2002, nearly 11 million people drove under the influence of illegal drugs, according to the National Survey on Drug Use and Health Report. While the effort to reduce drunk driving is making progress, those using illegal drugs like marijuana, cocaine, methamphetamine, and opiates continue to get behind the wheel, putting each of us at risk everyday.

According to the National Highway Traffic Safety Administration, drugs are used by approximately 10 to 22 percent of all drivers involved in fatal motor vehicle crashes. In 2003, a study conducted at the Shock Trauma Center at the University of Maryland Hospital in Baltimore found that testing for alcohol alone would have identified less than 30 percent of all the substance abusing drivers admitted to the trauma unit as a result of a motor vehicle accident. Drugged driving is clearly a serious problem.

While it is illegal in all 50 States to drive a motor vehicle under the influence of alcohol or drugs, there is no consistency in the way the States approach drug impaired drivers. In fact, existing laws often hinder the prosecution of drugged drivers. Adding further difficulty, there currently is no road side test to detect the presence of a controlled substance in a driver's body.

In response to these challenges, today I am pleased to be joined by Senator FEINSTEIN in introducing legislation designed to encourage States to develop and carry out drug impaired driving traffic safety programs. By adopting a model statute, States become eligible for grants that would assist drivers in need of drug treatment, as well as grants that would enhance the training of law enforcement and prosecutors. Furthermore, in an effort to keep drug impaired drivers off the road, passage of this legislation will advance the research and development of a roadside testing mechanism.

Clearly there is a need to strengthen efforts to identify, prosecute, and treat drugged drivers. Just as the coordinated efforts to prevent drunk driving have saved lives, so too can the devastating consequences of drugged driving be prevented. I encourage my colleagues to join in support of this legislation.

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

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

S. 2480

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 ''Drug Impaired Driving Research and Prevention Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) driving under the influence of, or after having used, illegal drugs has become a significant problem worldwide;

(2) in 2002, over 35,000,000 persons in the United States aged 12 or older had used illegal drugs in the past year and almost 11,000,000 of these persons (5 percent of the total population of the United States aged 12 or older and 31 percent of past year illicit drug users) had driven under the influence of, or after having used, illegal drugs in the past year;

(3) research has established that abuse of a number of drugs can impair driving performance;

(4) according to the National Highway Traffic Safety Administration, illegal drugs (often in combination with alcohol) are used by approximately 10 to 22 percent of drivers involved in all motor vehicles crashes;

(5) drug impaired drivers are less frequently detected, prosecuted, or referred to treatment than drunk drivers;

(6) there is a lack of uniformity or consistency in the way the 50 States approach drug impaired drivers;