brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

AMENDMENT NO. 1642

At the request of Mr. REED, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 1642 proposed to S. 397, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND:

S. 1553. A bill to amend the Internal Revenue Code of 1986 to enhance tax incentives for small property and casualty insurance companies; to the Committee on Finance.

Mr. BOND. Mr. President, I rise today to introduce a bill that addresses an inequity and helps clarify a tax exemption that exists for small property and casualty (P&C) insurance companies under the Internal Revenue Code Sections 501(c)(15) and 831(b). These small P&C insurers, often originally organized as mutual companies to offer insurance coverage to specific groups, mainly serve rural areas and farming communities that otherwise may not have been able to obtain affordable coverage. This tax exemption helps to provide additional surplus and cash flow for these small companies.

The Pension Funding Equity Act of 2004, ''2004 Act'', amended the small P&C insurer exemption because there were concerns that certain investment companies offering only a small amount of insurance could use the exemption to improperly shelter investment income from federal income tax. Now, under current law, the exemption applies only to P&C (i.e., non-life) insurance companies if their ''gross receipts'' for the taxable year do not exceed $600,000 and if premiums make up more than 50 percent of those gross receipts. A mutual P&C insurance company also may be exempt if its premiums make up more than 35 percent of its gross receipts and its gross receipts do not exceed $150,000. Additionally, P&C companies that have direct or net written premiums, whichever is greater, exceeding $350,000 but not exceeding $1.2 million, Income Election Limit, can elect to be taxed under a similar tax structure on their net investment income.

While the 2004 Act helped to close a potential loophole, the special provisions for small P&C insurers are in need of further clarification or reform. The term ''gross receipts'' is not defined uniformly for purposes of the Internal Revenue Code and the Income Election Limit has not been adjusted for inflation since the Tax Reform Act of 1986.

Without a clear definition of the term ''gross receipts,'' many unanswered questions remain with respect to determining whether a small P&C insurance company qualifies for exemption under section 501(c)(15). For example, such a company typically invests a large portion of its assets in government bonds. If the gross proceeds on the sale of an asset are included in the measure of ''gross receipts,'' based on a broad cash-flow definition of gross receipts, the mere maturation of bonds and reinvestment could cause a small P&C insurance company to fall out of the exemption even though there has been no change in the size of the business and even if the company realizes a loss on the sale or redemption. On the other hand, this arbitrary result would not occur if a definition of gross receipts that includes gains from the sale or exchange of assets is used. Such a definition of gross receipts looks to the size of the business in terms of income and overall profitability, which in turn ties into the reason for the tax exemption.

If the Income Election Limit is not adjusted to keep pace with inflation, the impact could be severe. Take, for instance, a small P&C insurer in my State that started insuring the local farmers in the late 1980s. Over the ensuing years, the company's client base changed very little, but the insurance premiums increased gradually to keep pace with inflationary pressures. As a result, while the business itself has not grown in absolute terms, its premium base has, therefore resulting in the loss of the elective alternative and simpler tax on investment income.

For the farmers and consumers covered by the small P&C insurer, this loss of the tax exemption or a simpler, more limited tax structure is certain to mean higher insurance premiums, leaving the client with the choice of cutting coverage or paying higher costs, neither of which is a preferred option. This is the last thing our agricultural community needs.

The legislation I am introducing today addresses both of these concerns. This legislation would add definitional language for ''gross receipts'' clarifying that gross receipts means premiums, plus gross investment income. In addition, the proposal simply increases the Income Election Limit from $1.2 million to $1.971 million, and indexes it annually for inflation.

According to the National Association of Mutual Insurance Companies, this legislation will help hundreds of small P&C insurance companies nationwide. Under this proposed legislation, at least 56 of the 82 small insurance companies in my State will be covered, thereby enabling them to continue providing critical insurance coverage to small businesses across Missouri.

With this legislation, we have an opportunity to infuse some fairness into our tax code and at the same time help the thousands of farmers, homeowners, and entrepreneurs covered by small P&C insurers in this country. I ask my colleagues to support this legislation, and I look forward to working with the Finance Committee to see it enacted into law.

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. 1553

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

SECTION 1. CLARIFICATION OF DEFINITION OF GROSS RECEIPTS FOR PURPOSES OF DETERMINING TAX EXEMPTION OF SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15) of the Internal Revenue Code is amended by adding at the end the following:

''(D) For purposes of subparagraph (A), the term 'gross receipts' means the gross amount received during the taxable year from the items described in section 834(b) and premiums (including deposits and assessments).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 2. INCREASE IN LIMITATION FOR ALTERNATIVE TAX LIABILITY FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Clause (i) of section 831(b)(2)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

''(i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $1,971,000, and''.

(b) INFLATION ADJUSTMENT.—Paragraph (2) of section 831(b) of such Code is amended by adding at the end the following new subparagraph:

''(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2006, the $1,971,000 amount set forth in subparagraph (A) shall be increased by an amount equal to—

''(i) $1,971,000, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting `calendar year 2005' for `calendar year 1992' in subparagraph (B) thereof. If the amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

By Ms. CANTWELL (for herself, Ms. COLLINS, Mr. BINGAMAN, Mrs. MURRAY, Ms. MIKULSKI, Mr. KOHL, and Mr. CORZINE):

S. 1555. A bill to amend the Farm Security and Rural Investment Act of 2002 to reform funding for the Seniors Farmers' Market Nutrition Program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Ms. CANTWELL. Mr. President, I am proud to rise today with my colleagues Senators COLLINS, BINGAMAN, MURRAY, MIKULSKI, KOHL and CORZINE, to introduce bipartisan legislation enhancing the Seniors Farmers' Market Nutrition Program. As all of my colleagues

know, the Seniors Farmers' Market Nutrition Program (SFMNP) was created through the Farm Security and Rural Investment Act of 2002 (P.L. 107–171). It is a program that provides grants to States, territories, and Native American tribal governments to provide coupons to low-income seniors to purchase fresh, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agricultural programs. The purpose of the program is to make healthy foods available to low-income seniors while simultaneously assisting domestic farmers.

Scientific research increasingly confirms that what we eat may have a significant impact on our health, quality of life, and longevity. In the United States, high intakes of fat and saturated fat, and low intakes of calcium and fiber-containing foods such as whole grains, vegetables and fruits are associated with several chronic health conditions that can impair the quality of life and hasten mortality.

According to the United States Department of Agriculture, research continues to find strong links between eating lots of fruits and vegetables and preventing chronic diseases such as cancer, heart disease, and stroke. Eating more fruits and vegetables may also play a role in preventing other diseases such as high blood pressure and osteoporosis, to name just two.

Two studies, one here in the U.S. and the other in the Netherlands, found eating a diet rich in vitamins E and C may help to lower your risk of Alzheimer's disease. Both found that eating foods high in vitamin E may reduce your risk of Alzheimer's, a degenerative brain disease. The U.S. study found that people with the highest vitamin E intake in their diet had a 70 percent lower frequency of Alzheimer's than those with the lowest amounts of vitamin E in their diet.

Vitamin A, which is found in many different fruits and vegetables, is very important to the health of your eyes. Other nutrients in produce, such as carotenoids, also play a role in maintaining healthy eyes and good vision. An example of a carotenoid is lutein. Lutein is found in dark green leafy vegetables like spinach.

While the health benefits of eating fruits and vegetables may seem obvious, only 27 percent of women and 19 percent of men eat the recommended 5 servings of fruits and vegetables every day.

The U.S. Department of Agriculture (USDA) Food and Nutrition Service administers the Seniors Farmers' Market Nutrition Program; and in fiscal year 2003, approximately 800,000 people received SFMNP coupons throughout the country. The food made available for sale came from an estimated 14,000 farmers at more than 2,000 farmers' markets as well as nearly 1,800 roadside stands and 200 community supported agricultural programs. In fiscal year 2005, 46 States, U.S. Territories, and federally recognized Indian tribal governments will operate the SFMNP. Close to 900,000 eligible seniors are expected to receive benefits that can be used at over 4,000 markets, roadside stands and community supported agricultural programs during the 2005 harvest season.

In Washington State, the Seniors Farmers' Market Nutrition Program has been incredibly successful in ensuring access to healthy foods for seniors, as well as bolstering the state's farmers and our farmers' markets. In fact, according to the Washington State University Nutrition Education program, in Washington State, the Senior Farmers' Market Nutrition Program reaches about 8,000 lower-income older adults each year in 35 of my State's 39 counties. In 2003, 472 farms, 49 farmers markets, four roadside stands and one community supported agriculture program participated in the SFMNP and the participating seniors in Washington state purchased approximately 90 tons of fresh produce while learning about the role of nutrition in their health in preventing chronic disease.

The bill that I am introducing today aims to better address the growing demand and need for the Seniors Farmers' Market Nutrition Program in four ways.

First, the bill would increase funding from $15 million to $25 million for the program in fiscal year 2005 and continue to expand the program by $25 million each year, until the program's expiration in 2007, meaning that the SFMNP would be funded at not less than $50 million in fiscal year 2006, and at not less than $75 million in 2007.

Second, the bill specifies that funds made available through this act will remain available to the program until exhausted. As such, any remaining funds from one fiscal year will roll over into the subsequent fiscal year budget for the SFMNP.

Third, provisions in the bill support administrative costs. Not more than ten percent of available funds in a fiscal year can be used to cover the operating expenses of the SFMNP.

Finally, the bill grants authority to the Secretary of Agriculture to expand the list of foods eligible for purchase to include minimally processed foods, such as honey, as deemed appropriate.

We should not forget, too, that an obvious, positive outgrowth of the program is the inherent ability of the SFMNP program to strengthen local economies and communities while at the same time works to preserve farmland and open spaces. I sincerely appreciate that the Washington Association of Area Agencies on Aging, as well as the Washington State Farmers Market Association, are supporting this legislation.

The legislation I am introducing today will go a long way in expanding the amount of funding available for the Senior Farmers' Market Nutrition Program. We all know that value and importance that individuals of all ages eat their requisite servings of vegetables and fruit each day. Such foods are high in fiber and lower the risk of chronic diseases such as heart disease and type 2 diabetes, in addition to colon and rectal cancer, high blood pressure, and obesity. However, food costs can be a significant barrier to developing and maintaining a healthy lifestyle. In establishing the Senior Farmers' Market Nutrition Program in 2002, Congress recognized that it is important to provide a means for low-income seniors to have access to fruits and vegetables. The legislation I introduce today will further our nation's commitment to ensuring the health of our nation's seniors, and I urge my colleagues to join me in cosponsoring this legislation.

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. 1555

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

SECTION 1. SENIORS FARMERS' MARKET NUTRITION PROGRAM.

(a) FUNDING.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by striking subsection (a) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary of Agriculture shall use funds available to the Commodity Credit Corporation to carry out and expand a seniors farmers' market nutrition program in the following amounts, to remain available until expended:

''(1) For fiscal year 2005, not less than $25,000,000.

''(2) For fiscal year 2006, not less than $50,000,000.

''(3) For fiscal year 2007, not less than $75,000,000.''.

(b) PURPOSES.—Section 4402(b)(1) of that Act (7 U.S.C. 3007(b)(1)) is amended—

(1) by striking ''unprepared'' and inserting ''minimally processed''; and

(2) by striking ''and herbs'' and inserting ''herbs, and other locally-produced farm products, as the Secretary considers appropriate''.

(c) ADMINISTRATIVE COSTS; UNEXPENDED FUNDS.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following:

''(d) ADMINISTRATIVE COSTS.—Not more than 10 percent of the funds made available for a fiscal year under subsection (a) may be used to pay the administrative costs of carrying out this section.''.

By Mr. WYDEN:

S. 1556. A bill to amend the Specialty Crops Competitiveness Act of 2004 to increase the authorization of appropriations for grants to support the competitiveness of specialty crops, to amend the Agricultural Risk Protection Act of 2000 to improve the program of value-added agricultural product market development grants by routing funds through State departments of agriculture, to amend the Federal Crop Insurance Act to require a nationwide expansion of the adjusted gross revenue insurance program, and

for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. WYDEN. Mr. President, today I introduce legislation that will safeguard and promote specialty crops and value-added agriculture in Oregon and in the United States. The great farmers and ranchers of Oregon produce over 200 commodities. This bill intends to improve their marketing opportunities, help Oregon farmers and processors get better prices for their products, and help Oregon farmers and processors compete in an increasingly global market. As it will help Oregon farmers so it will help specialty crop farmers from New York to Florida, Wisconsin to California.

I introduce this bill as my colleague from Oregon, Congresswoman HOOLEY, introduces the same bill in the House of Representatives.

In the increasingly technological world of microchips, products like potato chips and other agricultural commodities still remain a large part of Oregon's economy. In fact, agriculture is Oregon's second largest traded sector and Oregon's second largest export, behind the electronics industry. Oregon agriculture creates more than $8 billion of direct and indirect economic activity, in both urban and rural areas in the state.

At the center of this bill is the expansion of a specialty crop grant program, authorized by Congress in 2001, of which Oregon producers have already made use. Oregon received about $3.2 million that was used for over 50 projects involving product development, marketing, research, and export promotion. The Oregon Department of Agriculture estimates that over 3000 producers benefited from these projects. They also estimate that enhanced sales resulting from these projects reached $20 million—about six times what was invested.

The problem with this pilot program was the grants were only available once. Last year Congress passed legislation that reinstated these specialty crop grants but at funding level that would provide only around $500,000 to Oregon. This legislation raises the authorized level to $500 million and makes the grant program permanent. Under this expansion Oregon has the potential to receive $5 million a year in specialty crop grants.

The bill I am introducing today also improves USDA's value added grant program. Right now this program is run by bureaucrats in Washington, DC who have probably never been to Oregon and probably couldn't name the top Oregon specialty crops. My office has heard numerous complaints that this program is unwieldy, bureaucratic, and difficult to navigate. Last year every applicant from Oregon was disqualified on a technicality. This bill would make one simple but very important change: instead of having the Federal Government distribute the money, each State would get a share of the money to hand out to their chosen priorities.

Between these two grant programs each State in the union should have plenty of money to implement agricultural promotion strategies that match the needs of its individual growers, processors, and citizens.

This bill also authorizes funds for farmers and processors to become ''certified.'' Certification comes in many forms like ''Good Agricultural Practices,'' ''Good Handling Practices,'' or ''Organic.'' Often getting certified is necessary before farmers or processors can effectively market products whether in local grocery stores or to foreign countries. Certified products often fetch premium prices. To encourage farmers to get these certifications and increase their market share this legislation would have the USDA reimburse half the cost of the certifications.

Last, this legislation improves opportunities for specialty crop farmers to get crop insurance, increase loan availability, provide additional funding for export promotion, and make sure that American trade policy takes specialty crops into account.

I know that Oregonians doing a great job growing some of the best quality crops in the world. There are a lot of challenges facing agriculture: cheap imports, low commodity prices, taxation, labor, and dozens of others. This bill won't solve everything, but I think it will make an important contribution to improving Oregon agriculture by making it more competitive on a global level and helping farmers get a decent price for what they produce. I look forward to working with my colleagues to assure the enactment of this legislation.

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. 1556

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 ''Specialty Crop and Value-Added Agriculture Promotion Act''.

SEC. 2. DEFINITION OF SPECIALTY CROP.

Section 3(1) of the Specialty Crops Competitiveness Act of 2004 (Public 108–465; 7 U.S.C. 1621 note) is amended—

(1) by inserting ''fish and shellfish whether farm-raised or harvested in the wild,'' after ''dried fruits,''; and

(2) by adding at the end the following: ''The term includes specialty crops that are organically produced (as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).''.

SEC. 3. PERMANENT AUTHORIZATION OF APPROPRIATIONS FOR STATE SPECIALTY CROP BLOCK GRANTS.

Section 101 of the Specialty Crops Competitiveness Act of 2004 (Public 108–465; 7 U.S.C. 1621 note) is amended by striking subsection (i) and inserting the following:

''(i) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2006 and every fiscal year thereafter, there is authorized to be appropriated to the Secretary of Agriculture $500,000,000 to make grants under this section.''.

SEC. 4. BLOCK GRANTS TO STATES FOR VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT.

(a) IN GENERAL.—Section 231 of the Agricultural Risk Protection Act of 2000 (Public Law 106–224; 7 U.S.C. 1621 note) is amended by striking subsection (b) and inserting the following:

''(b) GRANT PROGRAM.—

''(1) STATE DEFINED.—In this subsection, the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(2) BLOCK GRANTS TO STATES.—

''(A) AMOUNT OF GRANT TO STATE.—From the amount made available under paragraph (7) for a fiscal year, the Secretary shall provide to each State, subject to subparagraph (B), a grant in an amount equal to the product obtained by multiplying the amount made available for that fiscal year by the result obtained by dividing—

''(i) the total value of the agricultural commodities and products made in the State during the preceding fiscal year; by

''(ii) the total value of the agricultural commodities and products made in all of the States during the preceding fiscal year.

''(B) LIMITATION.—The total grant provided to a State for a fiscal year under subparagraph (A) shall not exceed $3,000,000.

''(3) USE OF GRANT FUNDS BY STATES.—A State shall use the grant funds to award competitive grants—

''(A) to an eligible independent producer (as determined by the State) of a value-added agricultural product to assist the producer—

''(i) in developing a business plan for viable marketing opportunities for the value-added agricultural product; or

''(ii) in developing strategies that are intended to create marketing opportunities for the producer; and

''(B) to an eligible agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture (as determined by the State) to assist the entity—

''(i) in developing a business plan for viable marketing opportunities in emerging markets for a value-added agricultural product; or

''(ii) in developing strategies that are intended to create marketing opportunities in emerging markets for the value-added agricultural product.

''(4) AMOUNT OF COMPETITIVE GRANT .—

''(A) IN GENERAL.—The total amount provided under paragraph (3) to a grant recipient shall not exceed $500,000.

''(B) MAJORITY-CONTROLLED PRODUCER-BASED BUSINESS VENTURES.—The amount of grants provided by a State to majority-controlled producer-based business ventures under paragraph (3)(B) for a fiscal year may not exceed 10 percent of the amount of funds that are used by the State to make grants for the fiscal year under paragraph (3).

''(5) GRANTEE STRATEGIES.—A recipient of a grant under paragraph (3) shall use the grant funds—

''(A) to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added agricultural product; or

''(B) to provide capital to establish alliances or business ventures that allow the producer of the value-added agricultural product to better compete in domestic or international markets.

''(6) REPORTS.—Not later than 90 days after the end of a fiscal year for which funds are provided to a State under paragraph (2), the State shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing how the funds were used.

''(7) FUNDING.—On October 1 of each fiscal year, of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this subsection $100,000,000, to remain available until expended.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2005.

SEC. 5. REIMBURSEMENT OF CERTIFICATION COSTS.

(a) INCENTIVE PROGRAM.—

(1) IN GENERAL.—The Secretary of Agriculture shall establish an incentive program to encourage the independent third-party certification of agricultural producers and processors for product qualities, production practices, or other product or process attributes that increase marketability or value of an agricultural commodity.

(2) INCLUSIONS.—The Secretary shall include independent third-party certification systems, including programs such as Good Agricultural Practices, Good Handling Practices, and Good Manufacturing Practices programs, that the Secretary finds will provide 1 or more measurable social, environmental, or marketing advantages.

(b) STANDARDS.—The Secretary shall set standards regarding the types of certifications, and the types of certification-related expenses, that will qualify for reimbursement under the program.

(c) LIMITATION ON AMOUNT OF REIMBURSEMENT.—An agricultural producer or processor may not receive reimbursement for more than 50 percent of the qualified expenses incurred by the producer or processor related to accepted certifications.

SEC. 6. NATIONWIDE EXPANSION OF RISK MANAGEMENT AGENCY ADJUSTED GROSS REVENUE INSURANCE PROGRAM.

(a) EXPANSION.—Section 523(e) of the Federal Crop Insurance Act (7 U.S.C. 1523(e)) is amended by adding at the end the following:

''(3) PERMANENT NATIONWIDE OPERATION.—

''(A) IN GENERAL.—Effective beginning with the 2006 reinsurance year, the Corporation shall carry out the adjusted gross revenue insurance pilot program as a permanent program under this title and may expand the program to cover any county in which crops are produced.

''(B) TEMPORARY PREMIUM SUBSIDIES.—To facilitate the expansion of the program nationwide, the Corporation may grant temporary premium subsidies for the purchase of a policy under the program to producers whose farm operations are located in a county that has a high level of specialty crop production and has not had a high-level of participation in the purchase of crop insurance coverage.''.

(b) COMPTROLLER GENERAL STUDY.—The Comptroller General shall conduct a study of the Federal crop insurance program—

(1) to determine how well the program under section 523(e)(3) of the Federal Crop Insurance Act (as added by subsection (a)) serves specialty crop producers; and

(2) to recommend such changes as the Comptroller General considers appropriate to improve the program for specialty crop producers.

SEC. 7. EXPANSION OF FRUIT AND VEGETABLE PROGRAM IN SCHOOL LUNCH PROGRAMS.

The Richard B. Russell National School Lunch Act is amended—

(1) in section 18 (42 U.S.C. 1769), by striking subsection (g); and

(2) by inserting after section 18 the following:

''SEC. 19. FRUIT AND VEGETABLE PROGRAM.

''(a) IN GENERAL.—The Secretary shall make available in not more than 100 schools in each State, and in elementary and secondary schools on 1 Indian reservation, free fresh and dried fruits and vegetables and frozen berries to be served to school children throughout the school day in 1 or more areas designated by the school.

''(b) PRIORITY IN ALLOCATION.—In selecting States to participate in the program, the Secretary shall give priority to States that produce large quantities of specialty crops.

''(c) PUBLICITY.—A school participating in the program authorized by this section shall publicize in the school the availability of free fruits and vegetables under the program.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for to carry out this section $20,000,000 for each of fiscal years 2006 and 2007.''.

SEC. 8. INCREASE IN LIMIT ON DIRECT OPERATING LOANS; INDEXATION TO INFLATION.

Section 313 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1943) is amended—

(1) in subsection (a)(1), by striking ''$200,000'' and inserting ''$500,000 (increased, beginning with fiscal year 2007, by the inflation percentage applicable to the fiscal year in which the loan is made)''; and

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

''(2) the average of such index (as so defined) for the 12-month period ending on—

''(A) in the case of a loan other than a loan guaranteed by the Secretary, August 31, 2005; or

''(B) in the case of a loan guaranteed by the Secretary, August 31, 1996.''.

SEC. 9. TRADE OF SPECIALTY CROPS.

(a) ASSISTANT USTR FOR SPECIALTY CROPS.—Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by adding at the end the following:

''(6) ASSISTANT USTR FOR SPECIALTY CROPS.—

''(A) ESTABLISHMENT.—There is established in the Office the position of Assistant United States Trade Representative for Specialty Crops.

''(B) APPOINTMENT.—The Assistant United States Trade Representative for Specialty Crops shall be appointed by the United States Trade Representative.

''(C) PRIMARY FUNCTION.—The primary function of the Assistant United States Trade Representative for Specialty Crops shall be—

''(i) to promote the trade interests of specialty crop businesses;

''(ii) to remove foreign trade barriers that impede specialty crop businesses; and

''(iii) to enforce existing trade agreements beneficial to specialty crop businesses.

''(D) PAY.—The Assistant United States Trade Representative for Specialty Crops shall be paid at the level of a member of the Senior Executive Service with equivalent time and service.''.

(b) STUDY OF URUGUAY ROUND TABLE AGREEMENT BENEFITS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the benefits of the agreements approved by Congress under section 101(a)(1) of the Uruguay Round Agreements Act (19 U.S.C. 3511(a)(1)) to specialty crop businesses.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report describing the results of the study conducted under paragraph (1).

(c) FOREIGN MARKET ACCESS STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Agriculture shall develop and implement a foreign market access strategy to increase exports of specialty crops to foreign markets.

SEC. 10. INCREASED AUTHORIZATION FOR TECHNICAL ASSISTANCE FOR SPECIALTY CROPS.

Section 3205(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5680(d)) is amended by striking ''$2,000,000'' and inserting ''$10,000,000''.

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. 1558. A bill to amend the Ethics in Government Act of 1978 to protect family members of filers from disclosing sensitive information in a public filing and extend the public filing requirement for 5 years; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today to introduce legislation that would preserve an important means of protecting the safety of those who work in the Federal judiciary system.

This legislation, which I am pleased to sponsor with my distinguished colleague, Senator LIEBERMAN, pertains to information on Federal financial disclosure forms.

This legislation would amend the Ethics in Government Act to extend for five years the authority to redact financial disclosure statements filed by judges, and other officers and employees of the Federal judiciary. This redaction occurs after a finding is made by the Judicial Conference, in consultation with the United States Marshals Service, that revealing personal and sensitive information could endanger the filer. In such cases, this legislation would allow redactions of information that could put the filer or his or her family at risk.

In 1988, Congress recognized the potential for threats against individual judges. As a result, Congress authorized the judicial branch to redact, when circumstances require, certain information from individual financial disclosure reports before they are released to the public. The redaction provision was set to expire at the end of 2001, but Congress extended the redaction authority for an additional four years. The current authority expires at the end of this year.

The five-year extension in this legislation will help Congress ensure that the Judicial Conference carries out the authority in a manner that achieves the appropriate balance between safety measures and public disclosure. Given recent incidents of violence against judges and their families, the inclusion of threats to the filer's family is necessary to provide security and peace of mind.

The record shows that this redaction authority has been used sparingly and wisely. In its report to the Committee on Homeland Security and Governmental Affairs, the Judicial Conference reported that, of the 3,942 Federal judiciary employees required to file financial disclosure reports in 2004, only 177

reports were partially redacted before release.

For 40 judges, the approved redaction requests were based on specific threats such as high-threat trials, ongoing protective investigations, identify theft, and continuing threats from criminal defendants and disgruntled civil litigants. For 137 judges, the approved redaction requests were based on general threats and the disclosure of a family member's unsecured place of work, the judge's regular presence at an unsecured location, or information that would reveal the residence of the judge or members of the judge's family.

In response to a request by our Committee, the Government Accountability Office reviewed redaction requests from 1999 through 2002. GAO found that less than 10 percent of annual judicial filers requested any type of redaction.

In each instance where a report was redacted in its entirety, the determination was made that the judge who filed the report was subject to a specific, active security threat. Redactions of information identifying assets, gifts, reimbursements or creditor listings were allowed in only a very limited number of cases, and then only until the specifically identified threat ceased. According to the Judicial Conference, the most frequent redaction requests now relate to information that would reveal where a judge or a member of the judge's family can regularly be found.

A fair and impartial judiciary requires a safe and secure environment. This legislation will help ensure the judicial branch has procedures in place to protect personal information while ensuring the public retains its right to access to the annual disclosure reports. I look forward to working with my colleagues on this important legislation.

By Mr. SANTORUM:

S. 1560. A bill to establish a Congressional Commission on Expanding Social Service Delivery Options; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I rise to introduce a bill that would establish a Congressional Commission to explore the expansion of social services delivery options.

The bipartisan and bicameral Congressional Commission would undertake a thoughtful review of existing federal social service programs and make recommendations for program areas that would be appropriate for beneficiary-selected or beneficiary-directed options. The goal is to expand consumer choice and to minimize Constitutional concerns while partnering with faith-based and community providers. The importance of this commission is highlighted by its inclusion in the Senate's anti-poverty agenda.

Expanding options for social services is essential to help those in need. I have advocated similar proposals in the past during my time in the United States Senate as it relates to the Corporation for National and Community Service. In 2001, I introduced the AmeriCorps Reform and Charitable Expansion Act. The goal of this legislation was to dramatically increase the scope of service opportunities and charitable locations that would be eligible for voucher recipients and to focus efforts more on assisting low-income communities.

A current example of the success of this type of program is Section 8 Housing vouchers. The largest federal program designed to provide affordable housing to low-income families is the Section 8 Housing Choice Voucher program serving over 2 million households. Low-income families use Section 8 vouchers tenant-based subsidies in the private market to lower their rental costs to 30 percent of their incomes. As you know, the modern program began in the early 1980s and has grown to replace public housing as the primary tool for subsidizing the housing costs of low-income families. This approach, has opened up more communities and housing options for low-income families.

Since the 1996 welfare reauthorization, I have worked to ensure that faith-based and community organizations are full partners in social service delivery. Our nation needs more, not less, involvement from faith and community organizations. Faith-based organizations are many times the best-equipped institutions in their community to improve the lives of those in need, but have not always been able to receive any help from the government. This bill provides an opportunity to level the playing field for these providers by determining where we can engage the community and allow beneficiaries to be full participants in choosing their provider. The current discrimination against faith-based programs at the federal level prevents our communities from using all our resources to improve and even save lives. And for those are most in need, we need to use every resource we have.

Expanding social service delivery options should be a simple matter of common sense. The formula is simple: the more opportunity organizations have to deliver aid, the more options people have to get services, the more people we can help. For this reason, I encourage my colleagues to support the creation of this commission.

By Mr. CORZINE (for himself, Mr. LAUTENBERG, and Ms. LANDRIEU):

S. 1561. A bill to amend title 36, United States Code, to grant a Federal charter to the Irish American Cultural Institute; to the Committee on the Judiciary.

Mr. CORZINE. Mr. President, today I am proud to introduce a bill, along with Senators LAUTENBERG and LANDRIEU, to grant a Federal Charter to the Irish American Cultural Institute, an organization that promotes appreciation and recognition of the important contributions Irish-Americans have played throughout the history of the United States. A longstanding goal of the Irish American Cultural Institute been to establish a museum of Irish-American history and culture in Washington, DC, and I am pleased to help lay the foundation for achieving that goal.

The Irish American Cultural Institute is a national organization founded in 1962, with local chapters in 17 States, including New Jersey. The Institute has spent the last 40 years fighting to promote, preserve and educate about Irish and Irish-American culture. Those involved with the Institute do this, in part, by fostering strong cultural and educational ties between the United States and Ireland—sending American high school students to Ireland, and bringing Irish scholars, musicians, craftspeople, actors, and artists to the Untied States. They also fund academic research projects that raise awareness about Irish-American history, and provide fellowships for American professors to spend a year as a visiting scholar at the National University of Ireland. In short, the Irish American Cultural Institute serves as an important educational, informational, and financial resource for key initiatives important to the Irish and the Irish-American community in the United States.

Irish-Americans comprise more than 17 percent of the population of the United States, and have made enormous contributions to our Nation in countless ways. In my home State, more than 1.3 million New Jersey residents trace their roots back to Ireland. A Federal Charter would be an important step in the Irish American Cultural Institute's quest to promote activities that recognize and celebrate the heritage of Irish-Americans. I ask my colleagues to join me in supporting this legislation, and 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. 1561

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

SECTION 1. CHARTER FOR IRISH AMERICAN CULTURAL INSTITUTE.

Part B of subtitle II of title 36, United States Code, is amended—

(1) by redesignating chapter 1001 as chapter 1003;

(2) by redesignating sections 100101 through 100110, and the items relating thereto in the table of sections, as sections 100301 through 100310, respectively; and

(3) by inserting after chapter 901 the following new chapter:

"CHAPTER 1001—IRISH AMERICAN CULTURAL INSTITUTE

''SECTION 100101. ORGANIZATION.

''(a) FEDERAL CHARTER.—The Irish American Cultural Institute (in this chapter, the 'corporation'), incorporated in New Jersey, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with any provision of this chapter, the charter granted by this chapter expires.

''SECTION 100102. PURPOSES.

''The purposes of the corporation are as provided in the articles of incorporation and include—

''(1) establishing the Museum of Irish America in Washington, DC, as the center of Irish American thought, dialogue, debate, and reflection;

''(2) recognizing and recording a living memorial to the contributions of Irish-born and Irish Americans to the development of the United States;

''(3) providing a focal point for all Irish Americans, who make up 17 percent of the United States population, according to the 2000 census;

''(4) exploring past, current, and future events in Ireland and the United States, as they relate to Irish Americans and society as a whole;

''(5) documenting the tremendous contributions of Irish immigrants to the United States in the areas of architecture, military, politics, religion, labor, sports, literature, and art;

''(6) providing ongoing studies to ensure that the experiences of the past will benefit the future of both Ireland and the United States; and

''(7) establishing an Irish American Studies Program for students from both Ireland and the United States.

''SECTION 100103. MEMBERSHIP.

''Eligibility for membership in the corporation and the rights and privileges of membership are as provided the bylaws.

''SECTION 100104. GOVERNING BODY.

''(a) BOARD OF DIRECTORS.—The board of directors and the responsibilities of the board are as provided in the articles of incorporation.

''(b) OFFICERS.—The officers and the election of officers are as provided in the articles of incorporation.

''SECTION 100105. POWERS.

''The corporation shall have only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''SECTION 100106. EXCLUSIVE RIGHT TO NAME, SEALS, EMBLEMS, AND BADGES.

''The corporation has the exclusive right to use the name 'Irish American Cultural Institute' and any seals, emblems, and badges relating thereto that the corporation adopts.

''SECTION 100107. RESTRICTIONS.

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation or a director, or officer as such may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

''(c) DISTRIBUTION OF INCOME OR ASSETS.—The income or assets of the corporation may not inure to the benefit of, or be distributed to, a director, officer, or member during the life of the charter granted by this chapter. This subsection does not prevent the payment of reasonable compensation to an officer or member in an amount approved by the board of directors.

''(d) LOANS.—The corporation may not make any loan to a director, officer, or employee.

''(e) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORIZATION.—The corporation may not claim congressional approval or the authority of the United States Government for any of its activities.

''SECTION 100108. DUTY TO MAINTAIN TAX-EXEMPT STATUS.

''The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''SECTION 100109. PRINCIPAL OFFICE.

''The principal office of the corporation shall be in Morristown, New Jersey, or another place decided by the board of directors.

''SECTION 100110. RECORDS AND INSPECTION.

''(a) Records.—The corporation shall keep—

''(1) correct and complete books and records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote.

''(b) INSPECTION.—A member entitled to vote, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''SECTION 100111. SERVICE OF PROCESS.

''The corporation shall comply with the law on service of process of each State in which it is incorporated and each State in which it carries on activities.

''SECTION 100112. LIABILITY FOR ACTS OF OFFICERS AND AGENTS.

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''SECTION 100113. ANNUAL REPORT.

''The corporation shall submit an annual report to Congress on the activities of the corporation during the prior fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report shall not be printed as a public document.''.

SEC. 2. CLERICAL AMENDMENTS.

The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended—

(1) in the item relating to chapter 1001, by striking ''1001'' and inserting ''1003'' and by striking ''100101'' and inserting ''100301''; and

(2) by inserting after the item relating to chapter 901 the following new item:

'' ''1001. Irish American Cultural Institute ..... 100101''.''.''.

By Mr. ENZI (for himself, Mr. JOHNSON, Mr. ALLARD, and Mr. HAGEL):

S. 1562. A bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. ENZI. Mr. President, today I rise to introduce the Safe and Fair Deposit Insurance Act of 2005. As many of us in this chamber know, reforming the operations of the Federal Deposit Insurance Corporation has been an important but unfinished matter before the United States Senate for many years. Today, we will take a step closer to a solution by introducing this Act.

Wyoming is a rural State with small banks and lenders. Many people in Wyoming have limited choices when they need to safely deposit their hard-earned money. They usually depend on their local bank or credit union. These financial institutions in turn depend on deposit insurance to make sure that this money will be available in the case of a crisis. This is a relationship based on trust. Customers trust their bank, and banks trust their insurance.

This relationship is even more important in places like Gillette, Wyoming. As Mayor of Gillette, I saw many coal miners retire with considerable pensions that reflected years of hard work in the mines around Gillette. However, these miners received their pensions as a lump sum. Their retirement accounts are often much higher than the maximum insurance levels under current law. In fact, more and more retirement accounts are reaching this upper limit, not just in Wyoming. Workers need a safe place to save their money and build retirement security. That place should be in a local financial institution that invests in its community and economy.

The current FDIC system is in desperate need of improvement. Over the past twenty years, deposit insurance has been eroded by inflation and growing deposits. As newer financial institutions have sprung up, they have enjoyed this insurance without paying any premiums into the system. As time passes, current FDIC coverage continues to weaken, and so does the Agency's ability to respond to a deposit crisis, should one arise. That is why it is so important to reform the system now, before it is too late.

This bill will make changes to the deposit insurance system that will make it more flexible and quicker to adapt to the unexpected. It will apply an index that will protect coverage levels against future inflation, and raise retirement coverage to protect earnings made over a lifetime of hard work. It will also make premium charges fair by recognizing those institutions who have paid into the system and those who have not. Finally, it will merge the two primary deposit insurance funds. This consolidation will make the system stronger and prevent costly premium charges that will likely be assessed if the system is not reformed.

I would like to thank Senator JOHNSON and Chairman SHELBY for their cooperation and hard work on this bill. I urge my colleagues to support this bill and look forward to its passage with all deliberate speed.

By Mr. DEWINE (for himself and Mrs. LINCOLN):

S. 1563. A bill to amend title XIX of the Social Security Act to protect and

strengthen the safety net of children's public health coverage by extending the enhanced Federal matching rate under the State children's health insurance program to children covered by Medicaid at State option and by encouraging innovations in children's enrollment and retention, to advance quality and performance in children's public health insurance programs, to provide payments for children's hospitals to reward quality and performance, and for other purposes; to the Committee on Finance.

Mr. DEWINE. Mr. President, today I join my friend and colleague from Arkansas, Senator LINCOLN, to introduce a bill called the Advancing Better Coverage and Care for Children's Health Act or the ABCs for Children's Health Act. It is an important piece of legislation designed to help improve the access and quality of children's health services around the country,'' including children's hospitals.

Children's Hospitals provide care to hundreds of thousands of children across our Nation every day. They care for the great majority of children who are seriously ill. They are the mainstay of the health care safety net for low-income children.

But, a child who lacks health insurance is still much less likely to have timely access to the medical care they need. That's not right. Two-thirds of the more than 9 million uninsured children in the United States are eligible for Medicaid or SCHIP. They should be enrolled in public coverage when eligible, and we should streamline the eligibility process to make it easier, not more difficult.

President Bush said in 2004, ''America's children must also have a healthy start in life . . . we will lead an aggressive effort to enroll millions of poor children who are eligible but not signed up for the government's health insurance programs. We will not allow a lack of attention or information to stand between these children and the health care they need.'' The bill we are introducing today would do just that.

Our bill would provide the higher SCHIP federal match to states for children covered by Medicaid at the State option so that States think twice before removing children from the Medicaid rolls during State budget cuts. It also would provide a 90/10 administrative-match to help states update enrollment systems for children, including technology for ''express lane'' enrollment, the determination of eligibility for Medicaid and SCHIP when a child applies for another public benefit, like the school lunch program, and the allowance for enrollment by mail or phone.

We also need to do more to help strengthen the system of care to ensure quality and accountability for children's coverage. Our bill would do this by supporting innovative ideas at children's hospitals. Quality improvement funding shouldn't just be available to adult hospitals. Children's hospitals have good ideas, too, and we should support those good ideas.

Cincinnati Children's Hospital in Ohio is leading the way in improving care for children with diabetes, cystic fibrosis and other chronic conditions. The hospital is deeply committed to transforming health care delivery to improve outcomes for children.

In 2001, they were selected as one of just seven hospitals in the Pursuing Perfection initiative launched by the Robert Wood Johnson Foundation, and with this funding from the Foundation, they have made significant progress. They can document improvements in patient safety, in the effectiveness of care, in operational efficiency, in timely access to care, and in more patient-centered care. These are the reforms we need to pursue for children in Medicaid and for all children. Our bill would help Cincinnati Children's Hospital and our other Children's Hospitals speed their journey to better, safer, more cost-effective care.

A hospital that makes the effort to improve care and outcomes for children should be compensated for that effort. We need to advance quality and performance for children in Medicaid, like we are doing for seniors in Medicare. The development of hospital quality measures, testing their ability to gauge effective care and rewarding performance, should apply to all hospitals, including children's hospitals.

That's why we have worked with the National Association of Children's Hospitals to introduce a bill that would provide grants to help improve pediatric quality, so that Children's Hospitals can begin to establish measures for quality care and share what works—and what doesn't work—across hospital services for children nationwide.

Our bill would provide for a demonstration program in Medicaid to evaluate evidenced-based quality and performance measures in children's health services, with grants for States and/or providers in three areas: health information technology and evidenced-based outcome measures, disease management for children with chronic conditions, and evidenced-based approaches to improving the delivery of hospital care for children. The bill also would provide for a national Children's Hospital pay-for-performance demonstration program, rewarding Children's Hospitals, which provide critical access to services and voluntarily participate, for reporting and meeting quality and performance measures.

Evaluating the national measures of quality in Children's Hospitals, their success in capturing performance, and their applicability to pay-for-performance across States' varying methods of payments, would gives States, the Federal Government, and Children's Hospitals an essential base of information in measuring performance in children's hospital care. And that is something we vitally need.

I urge my colleagues to support and co-sponsor this bill.

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. 1563

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 ''Advancing Better Coverage and Care for Children's Health Act of 2005'' or the ''ABCs for Children's Health Act of 2005''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—COVERING CHILDREN

SEC. 101. PHASED-IN APPLICATION OF ENHANCED FMAP FOR CHILDREN WHOSE ELIGIBILITY IS OPTIONAL UNDER MEDICAID.

(a) IN GENERAL.—The first sentence of section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (b)—

(A) by striking ''and (4)'' and inserting ''(4)''; and

(B) by inserting before the period the following: '', and (5) the Federal medical assistance percentage shall be equal to the applicable percentage determined under subsection (y) with respect to medical assistance provided to children who are eligible for such assistance on the basis of subsection (a)(10)(A)(ii), (a)(10)(C), (e)(3), or (e)(9) of section 1902, or a waiver under subsection (c) or (e) of section 1915, or who are eligible for such assistance during a presumptive eligibility period under section 1920A (but only if the child is not eligible for medical assistance on the basis of section 1902(a)(10)(A)(i))''; and

(2) by adding at the end the following:

''(y) For purposes of the fifth clause of the first sentence of subsection (b), the applicable percentage determined under this subsection is—

''(1) in the case of fiscal year 2006, the enhanced FMAP determined under section

2105(b) by substituting '6 percent' for '30 percent' in such section;

''(2) in the case of fiscal year 2007, the enhanced FMAP determined under section 2105(b) by substituting '12 percent' for '30 percent' in such section;

''(3) in the case of fiscal year 2008, the enhanced FMAP determined under section 2105(b) by substituting '18 percent' for '30 percent' in such section;

''(4) in the case of fiscal year 2009, the enhanced FMAP determined under section 2105(b) by substituting '24 percent' for '30 percent' in such section; and

''(5) in the case of fiscal year 2010 or any fiscal year thereafter, the enhanced FMAP determined under section 2105(b).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2005.

SEC. 102. ENHANCED MATCHING RATE FOR THE EFFECTIVE ENROLLMENT AND RETENTION OF CHILDREN UNDER MEDICAID.

(a) IN GENERAL.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (E), by striking ''plus'' at the end and inserting ''and''; and

(2) by adding at the end the following:

''(F) 90 percent of the sums expended during such quarter which are attributable to the design, development, implementation, and evaluation of such enrollment systems as the Secretary determines are likely to provide more efficient and effective administration of the plan's enrollment and retention of eligible children, including—

''(i) 'express lane' enrollment for children through procedures to ensure that children's eligibility for medical assistance is determined and expedited through the use of technology and shared information with other public benefit programs, such as the school lunch program under the Richard B. Russell National School Lunch Act and the food stamp program under the Food Stamp Act of 1977;

''(ii) a single, simplified application form for medical assistance under this title and for children's health assistance under title XXI;

''(iii) procedures which allow for the enrollment of children by mail or through the Internet;

''(iv) the timely evaluation, assistance, and determination of presumptive eligibility under section 1920A;

''(v) procedures which allow for passive reenrollment of children to protect against the loss of coverage among eligible children; and

''(vi) such other enrollment system changes as the Secretary determines are likely to provide more efficient and effective administration of the plan's enrollment and retention of eligible children; plus''.

(b) EXCLUSION FROM ERRONEOUS EXCESS PAYMENT DETERMINATION.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396a(u)(1)(D)) is amended by adding at the end the following:

''(vi)(I) Notwithstanding clauses (ii) and (iii), and subject to subclause (II), in determining the amount of erroneous excess payments, there shall not be included any erroneous payments made with respect to medical assistance provided to children who are erroneously enrolled or erroneously provided with continued enrollment under this title as a result of the application of enrollment systems described in subsection (a)(3)(F).

''(II) Subclause (I) shall only apply with respect to erroneous payments made during the first 5 fiscal years that begin on or after the date of enactment of this clause.''.

SEC. 103. PRESERVING COMPREHENSIVE BENEFITS APPROPRIATE TO CHILDREN'S NEEDS.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by inserting after section 1925 the following:

''CLARIFICATION OF AUTHORITY UNDER SECTION 1115

''SEC. 1926. The Secretary may not impose or approve under the authority of section 1115 an elimination or modification of the amount, duration, or scope of the services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r))) or of the requirements of subparagraphs (A) through (C) of section 1902(a)(43).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), section 1926 of the Social Security Act, as added by subsection (a), shall apply to the approval on or after the date of enactment of this Act of—

(A) a waiver, experimental, pilot, or demonstration project under section 1115 of the Social Security Act (42 U.S.C. 1315); and

(B) an amendment or extension of such a project.

(2) EXCEPTION.—Section 1926 of the Social Security Act, as so added, shall not apply with respect to any extension of approval of a waiver, experimental, pilot, or demonstration project with respect to title XIX of the Social Security Act that was first approved before 1994 and that provides a comprehensive and preventive child health program under such project that includes screening, diagnosis, and treatment of children who have not attained age 21.

TITLE II—ADVANCING QUALITY AND PERFORMANCE: INNOVATIONS IN CARE

SEC. 201. PURPOSE.

[The purpose of this title is to increase the quality of the health care furnished to children under the health insurance programs under titles XIX and XXI of the Social Security Act].

SEC. 202. NATIONAL QUALITY FORUM; ADVANCING CONSENSUS-BASED PEDIATRIC QUALITY AND PERFORMANCE MEASURES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this title referred to as the ''Secretary''), acting through the Director of the Center for Medicaid and State Operations of the Centers for Medicare & Medicaid Services, shall enter into agreements with the National Quality Forum to facilitate the development of consensus-based pediatric quality and performance measures.

(b) CONSULTATION.—In carrying out agreements under subsection (a), the Director of the Center for Medicaid and State Operations shall consult with—

(1) the Agency for Healthcare Research and Quality; and

(2) national pediatric provider groups.

SEC. 203. RESEARCH GRANT PROGRAM; DEVELOPING NEW PEDIATRIC QUALITY AND PERFORMANCE MEASURES.

(a) IN GENERAL.—The Secretary, acting through the Administrator of the Agency for Healthcare Research and Quality, shall award grants to eligible entities for the development and evaluation of pediatric quality and performance measures.

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

(1) an institution or multiple institutions with demonstrated expertise and capacity to evaluate pediatric quality and performance measures;

(2) a National nonprofit association of pediatric academic medical centers with demonstrated experience in working with other pediatric provider and accrediting organizations in developing quality and performance measures for children's inpatient and outpatient care; and

(3) a collaboration of national pediatric organizations working to improve quality and performance in pediatric critical care.

(c) APPLICATION.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

SEC. 204. MEDICAID DEMONSTRATION PROGRAM; EVALUATING EVIDENCE-BASED QUALITY AND PERFORMANCE MEASURES FOR CHILDREN'S HEALTH SERVICES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Director of the Center for Medicaid and State Operations of the Centers for Medicare & Medicaid Services, shall establish demonstration projects in each of the 3 categories described in subsection (c) to advance quality and performance in the delivery of medical assistance provided to children under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) AUTHORITY.—

(1) IN GENERAL.—The Secretary is authorized to award grants to States or providers to conduct such projects.

(2) USE OF FUNDS.—Funds provided under a grant awarded under this section may be used for administrative costs, including costs associated with the design, data collection, and evaluation of the demonstration project conducted with such funds, and other expenditures that are not otherwise eligible for reimbursement under the medicaid program.

(3) EVIDENCE OF ORGANIZATIONAL COMMITMENT REQUIRED FOR AWARD OF GRANTS.—A State or provider shall not be eligible to receive a grant to conduct a demonstration project under this section unless the State or provider demonstrates a commitment to the concept of change and transformation in the delivery of children's health services. Dedication of financial resources of the State or provider to the project may be deemed to demonstrate evidence of such a commitment.

(c) PROJECT CATEGORIES DESCRIBED.—The 3 demonstration project categories described in this subsection are the following:

(1) Projects that adopt and use health information technology and evidenced-based outcome measures for pediatric inpatient and sub-specialty physician care and evaluate the impact of such technology and measures on the quality, safety, and costs of such care.

(2) Projects that demonstrate and evaluate care management for children with chronic conditions to determine the extent to which such management promotes continuity of care, stabilization of medical conditions, and functional outcomes, prevents or minimizes acute exacerbations of chronic conditions, and reduces adverse health outcomes and avoidable hospitalizations.

(3) Projects that implement evidenced-based approaches to improving efficiency, safety, and effectiveness in the delivery of hospital care for children across hospital services and evaluate the impact of such changes on the quality and costs of such care.

(d) SITES.—To the extent practicable, the Secretary shall use multiple sites in different geographical locations in conducting each of the 3 demonstration project categories described in subsection (c).

(e) UNIFORM MEASURES, DATA, PROJECT EVALUATIONS.—Working in consultation with

experts described in subsection (f) and with participating States or providers, the Secretary shall establish uniform measures (adjusted for patient acuity), collect data, and conduct evaluations with respect to the 3 demonstration project categories described in subsection (c).

(f) CONSULTATION.—In developing and implementing demonstration projects under this section, the Secretary shall consult with national pediatric provider organizations, consumers, and such other entities or individuals with relevant expertise as the Secretary deems necessary.

(g) REPORT.—Not later than 6 months after the completion of all demonstration projects conducted under this section, the Secretary shall evaluate such projects and submit a report to Congress that includes the findings of the evaluation and recommendations with respect to—

(1) expanding the projects to additional sites; and

(2) the broad implementation of identified successful approaches in advancing quality and performance in the delivery of medical assistance provided to children under the medicaid program.

SEC. 205. FUNDING.

In order to carry out the provisions of this title, out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary—

(1) $25,000,000 for fiscal year 2006;

(2) $30,000,000 for fiscal year 2007; and

(3) $35,000,000 for each of the fiscal years 2008, 2009, and 2010.

TITLE III—ENSURING ACCESS TO CARE

SEC. 301. PAY FOR PERFORMANCE FOR CHILDREN'S CRITICAL ACCESS HOSPITALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Administrator of the Centers for Medicare & Medicaid Services (in this section referred to as the ''Administrator''), shall implement a 4-year program to develop, implement, and evaluate a pay-for-performance program for eligible children's hospitals providing critical access to children eligible for medical assistance under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) CONSULTATION.—Measures of quality and performance utilized in the program will be determined by the Administrator in collaboration with participating eligible children's hospitals and in consultation with States, the National Association of Children's Hospitals and Related Institutions, the Agency for Healthcare Research and Quality, the National Quality Forum, and such other entities or individuals with expertise in pediatric quality and performance measures as the Administrator deems appropriate.

(c) ELIGIBLE CHILDREN'S HOSPITALS.—For purposes of this section, an eligible children's hospital is a children's hospital that, not later than January 1, 2006, has submitted an application to the Secretary to participate in the program established under this section and has been certified by the Secretary as—

(1) meeting the criteria described in subsection (d);

(2) agreeing to report data on quality and performance measures; and

(3) meeting or exceeding such measures as are established by the Secretary with respect to the provision of care by the hospital.

(d) CRITERIA DESCRIBED.—In order to be certified as meeting the criteria described in this subsection, a hospital shall be a general acute care children's hospital or a specialty children's hospital as defined under 1886(d)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iii)), or a non-freestanding general acute care children's hospital which shares a provider number with another hospital or hospital system that—

(1) has 62 or more total pediatric beds;

(2) has 38 or more total combined pediatric general medical or surgical and pediatric intensive care beds;

(3) has at least 4 pediatric intensive care beds;

(4) has a pediatric emergency room in the hospital or access to an emergency room with pediatric services through the hospital system; and

(5) provides a minimum of 25 percent of its days of care to patients eligible for medical assistance under the medicaid program.

(e) PAYMENT METHODOLOGY.—

(1) IN GENERAL.—An eligible children's hospital that participates in the program established under this section shall receive supplemental Federal payments for inpatient and outpatient care (which shall be in addition to any other payments the hospitals receive for such care under the medicaid program) for cost reporting periods or portions of such reporting periods occurring during fiscal years 2007 through 2010 in accordance with the following:

(A) FISCAL YEARS 2007 AND 2008.—

(i) IN GENERAL.—For hospital cost reporting periods or portions of such reporting periods occurring during fiscal year 2007 or 2008, hospitals reporting data for quality and performance measures established under the program and participating in the development of pay-for-performance methodology under this section, subject to clause (ii), shall receive with respect to inpatient or outpatient care that is determined to meet such measures, a Federal supplemental payment increase equal to the amount received under the medicaid program for such care multiplied by the market basket percentage increase for the year (as defined under section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii)).

(ii) LIMITATION.—The total amount of all Federal supplemental payments made with respect to cost reporting periods or portions of such periods described in clause (i) shall not exceed the amounts appropriated under this section for fiscal years 2007 and 2008.

(B) FISCAL YEARS 2009 AND 2010.—

(i) IN GENERAL.—For cost reporting periods or portions of such periods occurring during fiscal year 2009 or 2010, hospitals shall receive supplemental Federal payments reflecting measures of quality and performance and a pay-for-performance methodology developed by the Secretary in consultation with the entities described in subsection (b). Such methodology shall recognize clinical measures, patient satisfaction and adoption of information technology.

(ii) LIMITATION.—The total amount of all Federal supplemental payments made for cost reporting periods or portions of such periods described in clause (i) shall not exceed the amounts appropriated under this section for fiscal years 2009 and 2010.

(2) STATE MAINTENANCE OF EFFORT.—With respect to the periods for payment of the Federal supplemental payments established under paragraph (1), in no case shall a State—

(A) pay a participating hospital less for services for children eligible for medical assistance under the medicaid program than the hospital was paid with respect to the most recent cost reporting period ending before the date of enactment of this Act; or

(B) not provide an eligible children's hospital participating in the program established under this section (determined on a facility-specific basis) with the same increase in payment that the State may provide to any other hospital participating in the State medicaid program, including any State-owned or operated hospital or any hospital operated by a State university system.

(f) APPROPRIATIONS.—

(1) IN GENERAL.—Out of funds in the Treasury not otherwise appropriated, there are appropriated for making payments under this section—

(A) for fiscal year 2007, $80,000,000;

(B) for fiscal year 2008, $100,000,000; and

(C) for each of fiscal years 2009 and 2010, $120,000,000.

(2) CARRYOVER.—Any amount appropriated under paragraph (1) with respect to a fiscal year that remains unobligated as of the end of that fiscal year, shall remain available for obligation during the succeeding fiscal year, in addition to the amount appropriated under that paragraph for such succeeding fiscal year.

(g) EVALUATION AND REPORT.—Not later than September 1, 2010, the Secretary shall report to Congress on the program established under this section. In providing such a report, the Secretary shall—

(1) conduct an independent evaluation;

(2) consult with States, eligible children's hospitals participating in the program, the National Association of Children's Hospitals and Related Institutions, and other national pediatric organizations and individuals with expertise in pediatric measures of quality and performance;

(3) include a detailed description of the measures and payment enhancements used in determining and rewarding performance under the program;

(4) assess the impact of rewarding performance through the Federal supplemental payments provided under the program, including with respect to any improvements and innovations in the delivery of children's hospital care and children's access to appropriate care;

(5) assess how State hospital payment methodologies under the medicaid program, including hospital and physician payments and coverage, affect the capacity of the medicaid program to reward performance; and

(6) include recommendations to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding the implementation and design of the performance-based payments made under the program, whether to continue such program, and potential alternative approaches to making performance-based payments to such hospitals.

SEC. 302. INCLUSION OF CHILDREN'S HOSPITALS AS COVERED ENTITIES FOR PURPOSES OF LIMITATION OF PURCHASED DRUG PRICE.

(a) IN GENERAL.—Section 340B(a)(4) of the Public Health Services Act (42 U.S.C. 256b(a)(4)) is amended by adding at the end the following new subparagraph:

''(M) A children's hospital described in section 1886(d)(1)(B)(iii) of the Social Security Act which meets the requirements of clauses (i) and (iii) of subparagraph (L) and which would meet the requirements of clause (ii) of such subparagraph if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under the medicaid program.''.

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

Mrs. LINCOLN. Mr. President, I am pleased to join my colleague Senator MIKE DEWINE to introduce ''The ABCs for Children's Health Act of 2005,'' which seeks to expand access to quality health care for all children who are

eligible for Medicaid. The bill also ensures that children get the best health care at the right time.

Medicaid is the single largest insurer for children. Twenty-five million children in America, one out of every four, depend on Medicaid for their health care coverage. In Arkansas, more than half of the births are financed by Medicaid. Over half of the children in Arkansas are on Medicaid or received Medicaid services in the last year. Medicaid covers half of the care, on average, that children's hospitals provide. As a result, the availability and quality of health care for all children relies greatly on Medicaid.

As a result of progress in children's Medicaid coverage and the enactment of the State Children's Health Insurance Program, Congress has achieved an essential health care safety net for lower income children and children with special health care needs. Medicaid has saved millions of children from being uninsured when parents are faced with hard times and it has come to the aid of working families when children have exceptional medical costs. I believe that we must continue to build on that progress.

The ABCs for Children's Health Act of 2005 encourages States to provide care for more children under Medicaid. It also helps states to ensure that all eligible children are enrolled and that they get the high quality care they need. The bill would provide the same investments in quality and performance in children's health care service's that are being made in Medicare. National quality and performance measures for children are far behind those for adults.

I encourage my colleagues to join us as supporters of this important legislation to ensure that children get the quality health care they need to grow and prosper. Our Nation's children deserve the best health care we can offer. And this is a step in the right direction.

By Mr. SARBANES:

S. 1564. A bill to provide for the disposition of the Federal property located in Anne Arundel County, Maryland, a portion of which is currently used by the District of Columbia as the Oak Hill juvenile detention facility; to the Committee on Homeland Security and Governmental Affairs.

Mr. SARBANES. Mr. President, today I am introducing legislation to facilitate the orderly disposition of an 800 acre parcel of Federal property located in Laurel, Maryland, a portion of which is currently used by the District of Columbia as the Oak Hills Juvenile Detention and Commitment Center. The legislation is a companion to a measure which has been introduced in the House by Representative BENJAMIN CARDIN.

The Oak Hill Youth Center, located adjacent to the National Security Agency and the Baltimore-Washington parkway, is a detention facility for juvenile offenders from the District of Columbia between the ages of 12 and 21. It has been plagued by facility and management problems for many years. The buildings at the center are in deplorable condition and fail to meet health and safety standards. Overcrowding, mismanagement, escapes, drug use and abuse of detainees at the center have been the subject of numerous investigations, press reports and lawsuits over the years, and are of great concern to juvenile justice advocates, families of detainees and local residents, alike. Nearly two decades ago, a consent decree stemming from the lawsuit Jerry M. v. District of Columbia, required the District to make improvements at the facility and address the chronic neglect of its adolescent detainees. Since the decree, ''sixty judicial orders, 44 monitoring reports and almost $3 million in court imposed fines'' have been issued in connection with the District's Youth Services Administration failure to fully comply with the decree, according to a July 2001 article in the Washington Post. Last year a report issued by the District's Inspector General's office found that, ''many of the same types of problems that resulted in the 1986 Jerry M. lawsuit still exist today . . .'' The report documented numerous security problems, health issues, deficiencies in management, failures to effectively maintain the safety of female youth housed at the center, and drugs being smuggled into the facility on a continual basis.

There is a consensus that the Oak Hill Youth Center should be shutdown. A Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, established by Mayor Williams in August 2000, recommended in its final 2001 report that the Oak Hill Juvenile Detention center be closed and demolished. The Justice for DC Youth coalition, whose members include parents and juvenile justice advocates, has adamantly supported closing the existing Oak Hill facility and replacing it with a smaller, more homelike facility that is closer to the youth's homes.

This measure seeks to ensure the closure of the facility and the orderly disposition of the property, while addressing the concerns of Anne Arundel County, the NSA, the District of Columbia and all surrounding neighborhoods and residences. Above all, it would serve the youth currently being held at the facility by helping to place them in an environment that is more suitable for successful rehabilitation. I hope this measure can be acted upon quickly by the Congress and 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. 1564

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

SECTION 1. DISPOSITION OF OAK HILL PROPERTY.

(a) IN GENERAL.—The Oak Hill property shall be disposed of as follows:

(1) The portion of the property which is located west of the Baltimore-Washington Parkway shall be transferred to the jurisdiction of the Director of the National Park Service, who shall use such portion for parkland purposes.

(2) Subject to subsection (b), the portion of the property which is located east of the Baltimore-Washington Parkway and 200 feet and further north of the Patuxent River shall be transferred to the Secretary of the Army (acting through the Chief of Engineers) for use by the Director of the National Security Agency, who may lease such portion to the District of Columbia.

(3) The portion of the property which is located east of the Baltimore-Washington Parkway and south of the portion described in paragraph (2) shall be transferred to the jurisdiction of the Administrator of General Services, who shall in turn convey such portion to Anne Arundel County, Maryland, in accordance with subsection (c).

(b) PAYMENT FOR CONSTRUCTION OF NEW JUVENILE DETENTION FACILITY FOR DISTRICT OF COLUMBIA.—As a condition of the transfer under subsection (a)(2), the Director of the National Security Agency shall enter into an agreement with the Mayor of the District of Columbia under which—

(1) the juvenile detention facility for the District of Columbia currently located on the Oak Hill property shall be closed; and

(2) subject to appropriations, the Agency shall pay for the construction of a replacement facility at a site to be determined, with priority given to a location within the District of Columbia.

(c) CONVEYANCE OF PORTION OF PROPERTY TO ANNE ARUNDEL COUNTY.—

(1) IN GENERAL.—The Administrator of General Services shall convey, without consideration, to Anne Arundel County, Maryland, all right, title, and interest of the United States in and to that portion of the Oak Hill property referred to in subsection (a)(3).

(2) TERMS AND CONDITIONS OF CONVEYANCE.—The conveyance under paragraph (1) shall be carried out under such terms and conditions as may be agreed to by the Administrator and Anne Arundel County, except that, as a condition of the conveyance—

(A) Anne Arundel County shall agree to dedicate a portion of the property which is adjacent to the Patuxent River to parkland and recreational use; and

(B) Anne Arundel County shall agree to reimburse the National Security Agency for the amounts paid by the Agency under subsection (b) for the construction of a new juvenile detention facility for the District of Columbia, but only if the County makes 25 percent or more of the property conveyed under this subsection available for purposes other than open space or recreational use.

SEC. 2. OAK HILL PROPERTY DEFINED.

In this Act, the term ''Oak Hill property'' means the Federal property consisting of approximately 800 acres near Laurel, Maryland, a portion of which is currently used by the District of Columbia as a juvenile detention facility, and which is shown on Map Number 20 in the records of the Department of Assessments and Taxation, Tax Map Division, of Anne Arundel County.

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

S. 1565. A bill to restrict the use of abusive tax shelters and offshore tax havens to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, tax shelter and tax haven abuses are undermining the integrity of our tax system, robbing the Treasury of tens of billions of dollars each year, and shifting the tax burden from high income individuals and businesses onto the backs of middle income families. These abuses account for a significant portion of the more than $300 billion in taxes owed by individuals, businesses, and organizations that goes unpaid each year. As a matter of fairness, these abuses must be stopped. Today, I am introducing, with Senator NORM COLEMAN, a comprehensive tax reform bill called the Tax Shelter and Tax Haven Reform Act of 2005 that can help put an end to these abuses. Senator BARACK OBAMA is also an original cosponsor.

The Permanent Subcommittee on Investigations, on which I serve with Senator COLEMAN, has worked for years to expose and combat abusive tax shelters and tax havens. In the previous Congress, we introduced legislation confronting these twin threats to U.S. tax compliance; today's bill reflects not only the Subcommittee's additional investigative work but also innovative ideas to stop unethical tax advisers and tax havens from aiding and abetting U.S. tax evasion.

Abusive tax shelters are very different from legitimate tax shelters, such as deducting the interest paid on your home mortgage or Congressionally approved tax deductions for building affordable housing. Abusive tax shelters are complicated transactions promoted to provide large tax benefits unintended by the tax code. Abusive tax shelters are marked by one characteristic: there is no real economic or business rationale other than tax avoidance. As Judge Learned Hand wrote in Gregory v. Helvering, they are ''entered upon for no other motive but to escape taxation.''

Likewise, a tax haven is simply a country or jurisdiction that imposes little or no tax on income and offers non-residents the ability to escape taxes in their home country. The abuse of tax havens occurs when income is attributed to that country, even though little or no business activity actually occurs there. Tax havens are also characterized by corporate, bank, and tax secrecy laws that make it difficult for other countries to find out whether their citizens are using the tax haven to cheat on their taxes.

Today's tax dodges are often tough to prosecute. Crimes such as terrorism, murder, and fraud produce instant recognition of the immorality involved. Abusive tax shelters and tax havens, by contrast, are often ''MEGOs,'' meaning ''My Eyes Glaze Over.'' Those who cook up these concoctions count on their complexity to escape scrutiny and public ire. But regardless of how complicated or eye-glazing, the hawking of abusive tax shelters by tax professionals like accountants, bankers, investment advisers, and lawyers to thousands of people like late-night, cut-rate T.V. bargains is scandalous and has got to stop. Hiding tax schemes through offshore companies and bank accounts in tax havens with secrecy laws also needs to be attacked with the full force of the law.

Today, I would like to take a few minutes to try to cut through the haze of these schemes to see them for what they really are and explain what our bill would do to stop them. First, I will look at our investigation into abusive tax shelters and discuss the provisions we have included in this bill to combat them. Then, I will turn to tax haven abuses and our proposed remedies.

For three years, the Permanent Subcommittee on Investigations has been conducting an investigation into the design, sale, and implementation of abusive tax shelters. While I initiated this investigation when I was Chairman of our Subcommittee in 2002, it has since had the support of our new Chairman, Senator COLEMAN.

In November 2003, our Subcommittee held two days of hearings and released a report prepared by my staff that pulled back the curtain on how even some respected accounting firms, banks, investment advisors, and law firms had become the engines pushing the design and sale of abusive tax shelters to corporations and individuals across this country. In February 2005, the Subcommittee issued a report that provided further details on the role these professional firms played in the proliferation of these abusive shelters. Our Subcommittee report was endorsed by the full Committee on Homeland Security and Governmental Affairs in April.

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

For example, one shelter investigated by the Subcommittee and featured in the November 2003 Subcommittee hearings has since become part of an IRS effort to settle cases involving a set of abusive tax shelters known as ''Son of Boss.'' To date, more than 1,200 taxpayers have admitted wrongdoing and agreed to pay back taxes, interest and penalties totaling more than $3.7 billion. That's billions of dollars the IRS has collected on just one type of tax shelter, demonstrating both the depth of the problem and the potential for progress.

The Tax Shelter and Tax Haven Reform Act of 2005 that we are introducing today contains a number of measures to curb abusive tax shelters. The bill strengthens the penalties on promoters of abusive tax shelters. It codifies and strengthens the economic substance doctrine, which eliminates tax benefits for transactions that have no real business purpose apart from avoiding taxes. The bill deters banks' participation in abusive tax shelter activities by requiring regulators to develop new examination procedures to detect and stop such activities. It ends outdated communication barriers between key enforcement agencies to allow the exchange of information relating to tax evasion cases.

The bill also requires the Treasury Department to issue tougher standards for tax shelter opinion letters. It increases incentives for whistleblowers to report tax evasion to the IRS. The bill also provides for increased disclosure of tax shelter information to Congress. It simplifies and clarifies an existing prohibition on accountants being paid contingent fees which increase as phony tax losses increase. And it expresses the sense of the Senate that the IRS needs more funding to combat tax shelter abuses.

Let me be more specific about these key provisions to curb abusive tax shelters.

Title I of the bill strengthens two very important penalties that the IRS can use in its fight against the professionals who make these complex abusive shelters possible. A year ago, the penalty for promoting an abusive tax shelter, as set forth in Section 6700 of the tax code, was the lesser of $1,000 or 100 percent of the promoter's gross income derived from the prohibited activity. That meant in most cases the maximum fine was just $1,000.

Many abusive tax shelters sell for $100,000 or $250,000 apiece. Our investigation uncovered some tax shelters that were sold for as much as $2 million or even $5 million apiece, as well as instances in which the same cookie-cutter tax opinion letter was sold to 100 or even 200 clients. There are big bucks to be made in this business, and a $1,000 fine is laughable.

The Senate acknowledged that last year when it adopted the Levin-Coleman amendment to the JOBS Act, S. 1637, raising the Section 6700 penalty on abusive tax shelter promoters to 100 pefcent of the fees earned by the promoter from the abusive shelter. A 100 percent penalty would have ensured that the abusive tax shelter hucksters would not get to keep a single penny of their ill-gotten gains. That figure, however, was cut in half in the conference report, setting the penalty at 50 percent of the fees earned and allowing the promoters of abusive shelters get to keep half of their illicit profits.

While 50 percent is an obvious improvement over $1000, this penalty still

is inadequate and makes no sense. Why should anyone who pushes an illegal tax shelter that robs our Treasury of much needed revenues get to keep half of his ill-gotten gains? What deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and of course, all of their fees if they are not caught? Tax shelter promoters ought to face a penalty that is at least as harsh as the penalty imposed on the person who purchased their tax product, not only because the promoter is usually as culpable as the taxpayer, but also so promoters think twice about pushing abusive tax schemes.

Effective penalties should make sure that the peddler of an abusive tax shelter is deprived of every penny of profit earned from selling or implementing the shelter and then is fined on top of that. Specifically, Section 101 of this bill would increase the penalty on tax shelter promoters to an amount up to the greater of either 150 percent of the promoters' gross income from the prohibited activity, or the amount assessed against the taxpayer—including back-taxes, interest and penalties.

A second penalty provision in the bill addresses what our investigation found to be one of the biggest problems: the knowing assistance of accounting firms, law firms, banks, and others to help taxpayers understate their taxes. In addition to those who meet the definition of ''promoters'' of abusive shelters, there are professional firms that aid and abet the use of abusive tax shelters and enable taxpayers to carry out the abusive tax schemes. For example, law firms are often asked to write ''opinion letters'' to help taxpayers head off IRS questioning and fines that they might otherwise confront for using an abusive shelter. Currently, under Section 6701 of the tax code, these aiders and abettors face a maximum penalty of only $1,000, or $10,000 if the offender is a corporation. This penalty, too, is a joke. When law firms are getting $50,000 for each of these cookie-cutter opinion letters, it provides no deterrent whatsoever. A $1,000 fine is like a jaywalking ticket for robbing a bank.

Section 102 of the bill would strengthen Section 6701 significantly, subjecting aiders and abettors to a maximum fine up to the greater of either 150 percent of the aider and abettor's gross income from the prohibited activity, or the amount assessed against the taxpayer for using the abusive shelter. This penalty would apply to all aiders and abettors not just tax return preparers.

Again, the Senate has recognized the need to toughen this critical penalty. In last year's JOBS Act, Senator COLEMAN and I successfully increased this fine to 100 percent of the gross income derived from the prohibited activity. Unfortunately, the conference report completely omitted this change, allowing aiders and abettors to continue to profit without penalty from their wrongdoing.

If further justification for toughening these penalties is needed, one document uncovered by our investigation shows the cold calculation engaged in by a tax advisor facing low fines. A senior tax professional at accounting giant KPMG compared possible tax shelter fees with possible tax shelter penalties if the firm were caught promoting an illegal tax shelter. This senior tax professional wrote the following: ''[O]ur average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.'' He then recommended the obvious: going forward with sales of the abusive tax shelter on a cost-benefit basis.

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

Under the leadership of Senators GRASSLEY and BAUCUS, the Chairman and Ranking Member of the Finance Committee, the Senate has voted on multiple occasions to enact this economic substance provision, but the House conferees have rejected it each time. Since no tax shelter legislation would be complete without addressing this issue, Title III of this comprehensive bill proposes once more to include the economic substance doctrine in the tax code. I hope that with continued pressure, it will become law in this Congress.

The bill will also help fight abusive tax shelters that are disguised as complex investment opportunities and use financing or securities transactions provided by financial institutions. In reality, tax shelter schemes lack the economic risks and rewards associated with a true investment. These phony transactions instead often rely on the temporary use of significant amounts of money in low risk schemes mischaracterized as real investments. The financing or securities transactions called for by these schemes are often supplied by a bank, securities firm, or other financial institution.

Currently the tax code prohibits financial institutions from providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. The agencies that oversee these financial institutions on a daily basis, however, are experts in banking and securities law and generally lack the expertise to spot tax issues. Section 202 would crack down on financial institutions' illegal tax shelter activities by requiring federal bank regulators and the SEC to work with the IRS to develop examination techniques to detect such abusive activities and put an end to them.

These examination techniques would be used at least every 2 years, preferably in combination with routine regulatory examinations, and the regulators would report potential violations to the IRS. The agencies would also be required to prepare joint reports to Congress in 2007 and 2010 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

During hearings before the Permanent Subcommittee on Investigations on tax shelters in November 2003, IRS Commissioner Mark Everson testified that his agency was barred by Section 6103 of the tax code from communicating information to other federal agencies that would assist those agencies in their law enforcement duties. He pointed out that the IRS was barred from providing tax return information to the SEC, federal bank regulators, and the Public Company Accounting Oversight Board (PCAOB)—even, for example, when that information might assist the SEC in evaluating whether an abusive tax shelter resulted in deceptive accounting in a public company's financial statements, might help the Federal Reserve determine whether a bank selling tax products to its clients had violated the law against promoting abusive tax shelters, or help the PCAOB judge whether an accounting firm had impaired its independence by selling tax shelters to its audit clients.

A recent example demonstrates how ill-conceived these information barriers are. A few months ago the IRS offered a settlement initiative to companies and corporate executives who participated in an abusive tax shelter involving the transfer of stock options to family-controlled entities. Over a hundred corporations and executives responded with admissions of wrongdoing. In addition to tax violations, their misconduct may be linked to securities law violations and improprieties by corporate auditors or banks, but the IRS has informed the Subcommittee that it is currently barred by law from sharing the names of the wrongdoers with the SEC, banking regulators, or PCAOB.

These communication barriers are outdated, inefficient, and ill-suited to stopping the torrent of tax shelter abuses now affecting or being promoted by so many public companies, banks, and accounting firms. To address this problem, Section 203 of this bill would authorize the Treasury Secretary, with appropriate privacy safeguards, to disclose to the SEC, Federal banking agencies, and the PCAOB, upon request, tax return information related to abusive tax shelters, inappropriate tax avoidance, or tax evasion. The

agencies could then use this information only for law enforcement purposes, such as preventing accounting firms or banks from promoting abusive tax shelters, or detecting accounting fraud in the financial statements of public companies.

Another finding of the Subcommittee investigation is that some tax practitioners are circumventing current State and Federal constraints on charging tax service fees that are dependent on the amount of promised tax benefits. Traditionally, accounting firms charged flat fees or hourly fees for their tax services. In the 1990s, however, they began charging ''value added'' fees based on, in the words of one accounting firm's manual, ''the value of the services provided, as opposed to the time required to perform the services.'' In addition, some firms began charging ''contingent fees'' that were calculated according to the size of the paper ''loss'' that could be produced for a client and used to offset the client's other taxable income—the greater the so-called loss, the greater the fee.

In response, many States prohibited accounting firms from charging contingent fees for tax work to avoid creating incentives for these firms to devise ways to shelter substantial sums. The SEC and the American Institute of Certified Public Accountants also issued rules restricting contingent fees, allowing them in only limited circumstances. Recently, the Public Company Accounting Oversight Board sent the SEC for approval a similar rule prohibiting public accounting firms from charging contingent fees for tax services provided to the public companies they audit. Each of these Federal, State, and professional ethics rules seeks to limit the use of contingent fees under certain, limited circumstances.

The Subcommittee investigation found that tax shelter fees, which are typically substantial and sometimes exceed $1 million, are often linked to the amount of a taxpayer's projected paper losses which can be used to shelter income from taxation. For example, in three tax shelters examined by the Subcommittee, documents show that the fees were equal to a percentage of the paper loss to be generated by the transaction. In one case, the fees were typically set at 7 percent of the transaction's generated ''tax loss'' that clients could use to reduce other taxable income. In other words, the greater the loss that could be concocted for the taxpayer or ''investor,'' the greater the profit for the tax promoter. Think about that—greater the loss, the greater the profit. How's that for turning capitalism on its head!

In addition, evidence indicated that, in at least one instance, a tax advisor was willing to deliberately manipulate the way it handled certain tax products to circumvent contingent fee prohibitions. An internal document at an accounting firm related to a specific tax shelter, for example, identified the States that prohibited contingent fees. Then, rather than prohibit the tax shelter transactions in those States or require an alternative fee structure, the memorandum directed the firm's tax professionals to make sure the engagement letter was signed, the engagement was managed, and the bulk of services was performed ''in a jurisdiction that does not prohibit contingency fees.''

Right now, the prohibitions on contingent fees are complex and must be evaluated in the context of a patchwork of Federal, State, and professional ethics rules. Section 201 of the bill would establish a single enforceable rule, applicable nationwide, that would prohibit tax practitioners from charging fees calculated according to a projected or actual amount of tax savings or paper losses.

Past laws, such as the Whistleblower Protection Act and qui tam lawsuits under the False Claims Act, demonstrate that individuals with inside information can help expose serious misconduct that the U.S. government might otherwise miss. The tax arena is no different. Persons with inside information can help expose millions of dollars in tax fraud if they are willing to step forward and tell the IRS what they know about specific instances of misconduct.

Under current law, potential whistleblowers with inside information about tax misconduct do not have an established IRS office that is sensitive to their concerns, provides consistent treatment, and oversees the calculation and payment of monetary rewards for important information. Section 206 of this bill, which is very similar to a provision developed by the Senate Finance Committee, would, among other measures, establish a Whistleblowers Office within the IRS, codify standards for the payment of monetary rewards, and exempt whistleblower monetary payments from the alternative minimum tax.

Each of these measures is intended to increase incentives for persons to blow the whistle on tax misconduct. The one key difference between our bill and the Finance Committee provision is that we would continue to give the IRS the discretion to determine the amount of money paid to an individual whistleblower; our bill would not enable whistleblowers to appeal to a court to obtain additional sums. The fact-specific analysis that goes into evaluating a whistleblower's assistance and calculating a reward makes court review inadvisable. The existence of an appeal also invites litigation and necessitates the expenditure of taxpayer dollars—not for tax enforcement but for a court dispute. The new Whistleblowers Office is intended to promote the consistent, equitable treatment of persons who report tax misconduct, without also inviting expensive and time-consuming litigation.

Section 205 of the bill would direct the Treasury Department to issue new standards for tax practitioners issuing opinion letters on the tax implications of potential tax shelters as part of Circular 230. The public has traditionally relied on tax opinion letters to obtain informed and trustworthy advice about whether a tax-motivated transaction meets the requirements of the law. The Permanent Subcommittee on Investigations has found that, in too many cases, tax opinion letters no longer contain disinterested and reliable tax advice, even when issued by supposedly reputable accounting or law firms.

Instead, some tax opinion letters have become marketing tools used by tax shelter promoters and their allies to sell clients on their latest tax products. In many of these cases, financial interests and biases were concealed, unreasonable factual assumptions were used to justify dubious legal conclusions, and taxpayers were misled about the risk that the proposed transaction would later be designated an illegal tax shelter. Reforms are essential to address these abuses and restore the integrity of tax opinion letters.

The Treasury Department recently adopted standards that address a number of the abuses affecting tax shelter opinion letters; however, the standards do not take all the steps needed. Our bill would require Treasury to issue standards addressing a wider spectrum of tax shelter opinion letter problems, including: preventing concealed collaboration among supposedly independent letter writers; avoiding conflicts of interest that would impair auditor independence; ensuring appropriate fee charges; preventing practitioners and firms from aiding and abetting the understatement of tax liability by clients; and banning the promotion of potentially abusive tax shelters. By addressing each of these areas, a beefed-up Circular 230 could help reduce the ongoing abusive practices related to tax shelter opinion letters.

The bill would also provide for increased disclosure of tax shelter information to Congress. Section 204 would make it clear that companies providing tax return preparation services to taxpayers cannot refuse to comply with a Congressional document subpoena by citing Section 7216, a consumer protection provision that prohibits tax return preparers from disclosing taxpayer information to third parties. Several accounting and law firms raised this claim in response to document subpoenas issued by the Permanent Subcommittee on Investigations, contending they were barred by the nondisclosure provision in Section 7216 from producing documents related to the sale of abusive tax shelters to clients for a fee.

The accounting and law firms maintained this position despite an analysis provided by the Senate legal counsel showing that the nondisclosure provision was never intended to create a privilege or to override a Senate subpoena, as demonstrated in federal regulations interpreting the provision. This

bill would codify the existing regulations interpreting Section 7216 and make it clear that Congressional document subpoenas must be honored.

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

For example, earlier this year the IRS revoked the tax exempt status of four credit counseling firms, and, despite the Tax Analysts case, claimed that it could not disclose to the Subcommittee the names of the four firms or the reasons for revoking their tax exemption. Our bill would make it clear that, upon receipt of a request from a Congressional committee or subcommittee, the IRS must disclose documents, other than a tax return, related to the agency's determination to grant, deny, revoke or restore an organization's exemption from taxation.

Section 208 of the bill would establish that it is the sense of the Senate that additional funds should be appropriated for IRS enforcement, and that the IRS should devote proportionately more of its enforcement funds to combat rampant tax shelter and tax haven abuses. Specifically, the bill would direct increased funding toward enforcement efforts combating the promotion of abusive tax shelters and the aiding and abetting of tax evasion; the involvement of accounting, law and financial firms in such promotion and aiding and abetting; and the use of offshore financial accounts to conceal taxable income.

Tax enforcement is an area where a relatively small increase in spending pays for itself many times over. If we would hire adequate enforcement personnel, close the tax loopholes, and put an end to tax dodges, tens of billions in revenues that should support this country would actually reach the Treasury.

In addition to abusive tax shelters, the bill addresses the abusive tax havens that help taxpayers dodge their U.S. tax obligations through using corporate, bank, and tax secrecy laws that impede U.S. tax enforcement. The London-based Tax Justice Network recently estimated that wealthy individuals worldwide have stashed $11.5 trillion of their assets in tax havens. At one Subcommittee hearing in 2001, a former owner of an offshore bank in the Cayman Islands testified that he believed 100 percent of his former clients were engaged in tax evasion. He said that almost all were from the United States and would take elaborate measures to avoid IRS detection of their money transfers. He also expressed confidence that the government that licensed his bank would vigorously defend client secrecy in order to continue attracting business to the islands.

Corporations are also using tax havens to reduce their U.S. tax liability. A GAO report I released with Senator DORGAN last year found that nearly two-thirds of the top 100 companies doing business with the United States government now have one or more subsidiaries in a tax haven. One company, Tyco International, had 115.

Data released by the Commerce Department further demonstrates the extent of U.S. corporate use of tax havens, indicating that, as of 2001, almost half of all foreign profits of U.S. corporations were in tax havens. A study released by the journal Tax Notes in September 2004 found that American companies were able to shift $149 billion of profits to 18 tax haven countries in 2002, up 68 percent from $88 billion in 1999. Estimates show that funneling these profits from the U.S. to tax havens deprives the U.S. Treasury of anywhere from $10 billion to $20 billion in lost tax revenue each year.

Here's just one simplified example of the gimmicks being used by corporations to transfer taxable income from the United States to tax havens to escape taxation. Suppose a profitable U.S. corporation establishes a shell corporation in a tax haven. The shell corporation has no office or employees, just a mailbox address. The U.S. parent transfers a valuable patent to the shell corporation. Then, the U.S. parent and all of its subsidiaries begin to pay a hefty fee to the shell corporation for use of the patent, shifting taxable income out of the United States to the shell corporation. The shell corporation declares a portion of the fees as profit, but pays no tax since it is a tax haven resident. The icing on the cake is that the shell corporation can then ''lend'' the income it has accumulated from the fees back to the U.S. companies for their use. The companies, in turn, pay ''interest'' on the ''loans'' to the shell corporation, shifting still more taxable income out of the United States to the tax haven. This example highlights just a few of the tax haven ploys being used by some U.S. corporations to escape paying their fair share of taxes here at home.

Sections 401 and 402 of our bill tackle the issue of tax havens by removing U.S. tax benefits associated with jurisdictions that fail to cooperate with U.S. tax enforcement efforts. Dozens of jurisdictions around the world have enacted corporate, bank, and tax secrecy laws that, in too many cases, have been used to justify failing to provide timely information to U.S. officials investigating tax misconduct. Some tax havens have refused to provide timely information about persons suspected of either hiding funds in the jurisdiction's offshore bank accounts or using offshore corporations and deceptive transactions to disguise their income or create phony losses to shelter their U.S. income from taxation.

Section 401 of the bill would give the Treasury Secretary the discretion to designate such an offshore tax haven as ''uncooperative'' and to publish an annual list of these uncooperative tax havens. We intend that the Treasury Secretary will develop this list by evaluating the actual record of cooperation experienced by the United States in its dealings with specific jurisdictions around the world. While many offshore tax havens have signed treaties with the United States promising to cooperate with U.S. civil and criminal tax enforcement, the level of resulting cooperation varies. For example, after one country signed a tax treaty with the United States, the government that led the effort was voted out of office by treaty opponents. Treasury needs a way to ensure that tax treaty obligations are met and to send a message to jurisdictions that impede U.S. tax enforcement. This bill gives Treasury the tools it needs to get the cooperation it needs.

Under Sections 401 and 402 of the bill, persons doing business in tax havens designated by Treasury as uncooperative would be denied U.S. tax benefits and incur increased disclosure requirements. First, the bill would disallow the tax benefits of deferral and foreign tax credits for income attributed to an uncooperative tax haven. Second, taxpayers would be required to provide greater disclosure of their activities, including disclosing on their returns any payment above $10,000 to a person or account located in a designated haven. These restrictions would not only deter U.S. taxpayers from doing business with uncooperative tax havens, they would also provide the United States with powerful weapons to convince tax havens to cooperate fully with U.S. tax enforcement efforts and help end offshore tax evasion abuses.

Sections 403 and 404 further address offshore tax evasion. Section 403 would toughen penalties on eligible taxpayers who did not participate in Treasury programs designed to encourage voluntary disclosure of previously unreported income placed by the taxpayer in offshore accounts and accessed by credit card or other financial arrangements. Section 404 would authorize Treasury to promulgate regulations to stop ongoing foreign tax credit abuses in which, among other schemes, taxpayers claim credit on their U.S. tax returns for paying foreign taxes, but then fail to report the income related to those foreign taxes. Under the leadership of Senators GRASSLEY and BAUCUS, both Sections 403 and 404 passed the Senate earlier this year as part of the Highway Bill, H.R. 3, but were dropped in conference.

The eyes of some people may glaze over when tax shelters and tax havens are discussed, but unscrupulous taxpayers and tax professionals see illicit

dollar signs. Our commitment to crack down on their tax abuses must be as strong as their determination to get away with ripping off America and American taxpayers.

Our bill provides our government the tools to end the use of abusive tax shelters and uncooperative tax havens and to punish the powerful professionals who push them.

It's long past time for Congress to act to end the shifting of a disproportionate tax burden onto the shoulders of honest Americans.

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

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

SUMMARY OF TAX SHELTER AND TAX HAVEN REFORM ACT OF 2005

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

Strengthens the penalties for: promoting abusive tax shelters; and knowingly aiding or abetting a taxpayer in understating tax liability.

TITLE II—PREVENTING ABUSIVE TAX SHELTER TRANSACTIONS

PROHIBIT TAX SERVICE FEES DEPENDANT UPON SPECIFIC TAX SAVINGS

Prohibits charging a fee for tax services in an amount that is calculated according to or dependant upon a projected or actual amount of tax savings or losses offsetting taxable income. Builds on contingent fee prohibitions in more than 20 states, AICPA rules applicable to accountants, SEC regulations applicable to auditors of publicly traded corporations, and proposed PCAOB rules for auditors. Based upon investigation by Permanent Subcommittee on Investigations showing tax practitioners are circumventing current constraints.

DETER FINANCIAL INSTITUTION PARTICIPATION IN ABUSIVE TAX SHELTER ACTIVITIES

Requires Federal bank regulators and the SEC to develop examination techniques to detect violations by financial institutions of the prohibition against providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. Regulators must use such techniques at least every 2 years in routine or special examinations of specific institutions and report potential violations to the IRS. The agencies must also prepare a joint report to Congress in 2007 and 2010 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

INCREASE DISCLOSURE OF CERTAIN TAX SHELTER INFORMATION

Authorizes Treasury to share certain tax return information with the SEC, Federal bank regulators, or PCAOB, under certain circumstances, to enhance tax shelter enforcement or combat financial accounting fraud. Clarifies Congressional subpoena authority to obtain information (but not a taxpayer return) from tax return preparers. Clarifies Congressional authority to obtain certain tax information (but not a taxpayer return) from Treasury related to an IRS decision to grant, deny, revoke, or restore an organization's tax exempt status.

REQUIRE TOUGHER TAX SHELTER OPINION STANDARDS FOR TAX PRACTITIONERS

Codifies and expands Treasury's authority to beef up Circular 230 standards for tax practitioners providing ''opinion letters'' on specific tax shelter transactions.

INCREASE INCENTIVES FOR IRS WHISTLEBLOWERS

Encourages persons to blow the whistle on tax misconduct by establishing a Whistleblowers Office within the IRS to provide consistent, equitable treatment of persons bringing information to the IRS. Codifies standards for awarding a portion of proceeds collected from actions based on information they bring to the IRS's attention. Modeled on provision passed by the Senate in the Highway Bill. Estimated to raise $407 million over 10 years.

Deny tax deduction for fines, penalties and settlements.

Clarifies that penalties, fines and settlements paid to the government are not deductible. Passed by the Senate in the Highway Bill. Estimated to raise $200 million over 10 years.

''Sense of the Senate'' on IRS Enforcement Priorities

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

TITLE III—REQUIRING ECONOMIC SUBSTANCE

Strengthen the Economic Substance Doctrine

Strengthens and codifies the economic substance doctrine to invalidate transactions that have no economic substance or business purpose apart from tax avoidance or evasion. Also increases penalties for understatements attributable to a transaction lacking in economic substance. Passed by the Senate in the Highway Bill. Estimated to raise $15.9 billion over 10 years.

TITLE IV—DETERRING OFFSHORE TAX EVASION

Deter Use of Uncooperative Tax Havens

Deters taxpayer use of uncooperative tax havens with corporate, bank or tax secrecy laws, procedures, or practices that impede U.S. enforcement of its tax laws by: (1) requiring disclosure on taxpayer returns of any payment above $10,000 to accounts or persons located in such tax havens, and (2) ending the tax benefits of deferral and foreign tax credits for any income earned in such tax havens. Gives Treasury Secretary discretion to designate a tax haven as uncooperative and publish an annual list of those jurisdictions. Estimated to raise $87 million over 10 years.

Strengthen Penalties for Concealing Income in Offshore Accounts

Toughens penalties on taxpayers who, despite being eligible, did not participate in Treasury programs to encourage voluntary disclosure of previously unreported income placed by the taxpayer in offshore accounts and accessed through credit card or other financial arrangements. Passed by the Senate in the Highway Bill. Estimated to raise $10 million over 10 years.

Stop Schemes to get Foreign Tax Credit Without Reporting Related Income

Authorizes Treasury to promulgate regulations to address abusive foreign tax credit (FTC) schemes that involve the inappropriate separation or stripping of foreign taxes from the related foreign income so taxpayers get the benefit of the FTC but don't report the related income. The provision becomes effective for transactions entered into after the date of enactment. Passed by the Senate in the Highway Bill. Estimated to raise $16 million over 10 years.

S. 1565

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Shelter and Tax Haven Reform Act of 2005''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

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

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

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

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

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

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

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

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

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

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

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

(b) CONFORMING AMENDMENT.—Section 6700(a) is amended by striking the last sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE II—PREVENTING ABUSIVE TAX SHELTERS

SEC. 201. PROHIBITED FEE ARRANGEMENT.

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

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

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

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

''(f) PROHIBITED FEE ARRANGEMENT.—

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

''(A) tax savings or benefits, or

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

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

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

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

SEC. 202. PREVENTING TAX SHELTER ACTIVITIES BY FINANCIAL INSTITUTIONS.

(a) EXAMINATIONS.—

(1) DEVELOPMENT OF EXAMINATION TECHNIQUES.—Each of the Federal banking agencies and the Commission shall, in consultation with the Internal Revenue Service, develop examination techniques to detect potential violations of section 6700 or 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(2) FREQUENCY.—Not less frequently than once in each 2-year period, each of the Federal banking agencies and the Commission shall implement the examination techniques developed under paragraph (1) with respect to each of the depository institutions, brokers, dealers, or investment advisers subject to their enforcement authority. Such examination shall, to the extent possible, be combined with any examination by such agency otherwise required or authorized by Federal law.

(b) REPORT TO INTERNAL REVENUE SERVICE.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service in accordance with applicable provisions of law.

(c) REPORT TO CONGRESS.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2007 and 2010 on their progress in preventing violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the terms ''broker'', ''dealer'', and ''investment adviser'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term ''Commission'' means the Securities and Exchange Commission;

(3) the term ''depository institution'' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(4) the term ''Federal banking agencies'' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(5) the term ''Secretary'' means the Secretary of the Treasury.

SEC. 203. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

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

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

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

activities related to promoting or facilitating inappropriate tax avoidance or tax evasion. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 204. DISCLOSURE OF INFORMATION TO CONGRESS.

(a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

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

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

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

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

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

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

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

''(2) INSPECTION BY CONGRESS.—

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

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

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

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

as if such papers constituted returns.''.

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

SEC. 205. TAX OPINION STANDARDS FOR TAX PRACTITIONERS.

Section 330(d) of title 31, United States Code, is amended to read as follows:

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

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

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

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

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

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

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

''(7) Preventing practitioners and firms from aiding or abetting the understatement of tax liability by clients.

''(8) Banning the promotion of potentially abusive or illegal tax shelters.''.

SEC. 206. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking ''The Secretary'' and inserting ''(a) in general.—The Secretary'',

(2) by striking ''and'' at the end of paragraph (1) and inserting ''or'',

(3) by striking ''(other than interest)'', and

(4) by adding at the end the following new subsections:

''(b) AWARDS TO WHISTLEBLOWERS.—

''(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action, and shall be determined at the sole discretion of the Whistleblower Office.

''(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

''(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

''(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

''(3) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

''(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds $200,000 for any taxable year subject to such action, and

''(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

''(4) ADDITIONAL RULES.—

''(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

''(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

''(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

''(c) WHISTLEBLOWER OFFICE.—

''(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Whistleblower Office' which—

''(A) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

''(B) shall monitor any action taken with respect to such matter,

''(C) shall inform such individual that it has accepted the individual's information for further review,

''(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

''(E) may ask for additional assistance from such individual or any legal representative of such individual, and

''(F) shall determine the amount to be awarded to such individual under subsection (b).

''(2) FUNDING FOR OFFICE.—From the amounts available for expenditure under subsection (a), the Whistleblower Office shall be credited with an amount equal to the awards made under subsection (b). These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

''(3) REQUEST FOR ASSISTANCE.—

''(A) IN GENERAL.—Any assistance requested under paragraph (1)(E) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such disclosure subject to section 6103(n).

''(B) FUNDING OF ASSISTANCE.—From the funds made available to the Whistleblower Office under paragraph (2), the Whistleblower Office may reimburse the costs incurred by any legal representative in providing assistance described in subparagraph (A).''.

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

SEC. 207. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which—

''(A) the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, and

''(B) is identified as restitution in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

''(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 208. SENSE OF THE SENATE ON TAX ENFORCEMENT PRIORITIES.

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

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

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

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

TITLE III—REQUIRING ECONOMIC SUBSTANCE

SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

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

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

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

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

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

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

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

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

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

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

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

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

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

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

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

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

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

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

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

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection

with a trade or business or an activity engaged in for the production of income.

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

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

''(I) depreciation,

''(II) any tax credit, or

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

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

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

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

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

SEC. 302. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

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

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

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

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

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

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

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

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

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

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

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

''(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e). .....

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''. .....

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting ''and without regard to items with respect to which a penalty is imposed by section 6662B'' before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting ''and noneconomic substance transaction understatements'' after ''reportable transaction understatements'' both places it appears,

(B) in paragraph (2)(A), by inserting ''and a noneconomic substance transaction understatement'' after ''reportable transaction understatement'',

(C) in paragraph (2)(B), by inserting ''6662B or'' before ''6663'',

(D) in paragraph (2)(C)(i), by inserting ''or section 6662B'' before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting ''and section 6662B'' after ''This section'',

(F) in paragraph (3), by inserting ''or noneconomic substance transaction understatement'' after ''reportable transaction understatement'', and

(G) by adding at the end the following new paragraph:

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

(3) Subsection (e) of section 6707A is amended—

(A) by striking ''or'' at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

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

''(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B,''.

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

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

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

SEC. 303. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking ''attributable'' and all that follows and inserting the following: ''attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).'', and

(2) by inserting ''**and noneconomic substance transactions**'' after ''**transactions**''.

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

TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

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

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

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

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

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

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

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

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

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

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

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

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

''(B) such jurisdiction was identified by an intergovernmental group or organization of

which the United States is a member as uncooperative with international tax enforcement or information exchange and the United States concurs in the determination.

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

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

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

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

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

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

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

(a) LIMITATION ON DEFERRAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 403. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term ''applicable taxpayer'' means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of an offshore payment mechanism (including credit, debit, or charge cards) issued by a bank or other entity in a foreign jurisdiction, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has not signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 or voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary's delegate may waive the application of paragraph (1) for any taxpayer if the Secretary or the Secretary's delegate determines that—

(i) the use of such offshore payment mechanism or financial arrangement was incidental to the transaction,

(ii) in the case of a trade or business, such use took place in the ordinary course of the trade or business of the taxpayer, and

(iii) such waiver would serve the public interest.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) FEES AND EXPENSES.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of all additional interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 404. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States), as amended by section 402, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.''.

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

Mr. COLEMAN. Mr. President, today I rise to join Senator LEVIN in introducing the Tax Shelter and Tax Haven Reform Act of 2005. This bill addresses abusive tax shelters and offshore tax havens which allow tax evaders to avoid paying their fair share. These abuses increase the amount of taxes for everyone else. By increasing the penalty for these shelters, this legislation

will do much to ensure that the public trust in our tax laws is restored.

Two years ago, as Chairman of the Permanent Subcommittee on Investigations, I held Subcommittee hearings on abusive tax shelters. It became clear to the Subcommittee that some tax avoidance schemes are clearly abusive. These abusive shelters relied on sham transactions with no financial or economic utility other than to manufacture tax benefits.

Abusive tax shelters hurt the American people. For example, a recent IRS study estimates the Nation's ''tax gap''—the difference between the amount of taxes owed and the amount collected was $353 billion in 2001. The study also found that over 80 percent of the ''tax gap'' is due to taxpayers underreporting their taxes. This means that honest taxpayers are forced to pay more to make up for those taxpayers who dodge Uncle Sam.

The use of abusive tax shelters exploded during the high-flying 1990s, when many firms were awash in cash and were more concerned with generating fees than remaining compliant with the code. The lure of millions of dollars in fees clearly played a role in the decision on the part of tax professionals to drive a Brinks truck through any purported tax loophole.

Abusive tax shelters require accountants and financial advisors who develop and structure transactions to take advantage of loopholes in the tax code. Lawyers provide cookie cutter tax opinions deeming the transactions to be legal. Bankers provide loans with little or no credit risk, yet the amount of the loan creates a multi-million dollar tax loss.

This became a game. Reputable professionals were able to earn huge profits by providing services that offered a ''veneer of legitimacy'' to the transactions. The parties involved were careful to hide the transactions from IRS detection by failing to register and failing to provide lists of clients who used the transactions to the IRS.

It was clear to the Subcommittee that the promoters of these tax shelters failed to register transactions with the IRS partly because the penalties for failing to register were so low compared to the expected profits. In other words, the risk-benefit ratio was entirely lopsided in the favor of the promoters. This bill will end this advantage and will strengthen the enforcement tools that are at Uncle Sam's disposal.

Current law provides for penalties that amount to 50 percent of the gains of those who market, plan, implement and sell sham tax shelters to individuals and corporations. However, I agree with my esteemed colleague, Senator LEVIN, that even stronger penalties are needed. The provision to substantially increase penalties to the promoters and aiders and abettors who manufacture and implement these sham transactions so that they must give back more than just half of their ill-gotten gains is vital to restoring the integrity of our tax laws and deterring future tax avoidance.

This is not a victimless crime. It is not the government that loses the money. It is working moms and dads who bear the brunt of lost revenue so that a handful of lawyers, accountants, investment advisors, bankers and their clients can manipulate legitimate business practices to make a profit.

We need to give honest, hard working Americans a better deal—by cracking down on those who choose not to pay their fair share of taxes. This bill is a step in the right direction.

Mr. OBAMA. Mr. President, I rise today to speak about the ''Tax Shelter and Tax Haven Reform Act of 2005,'' of which I am a cosponsor. This bill seeks to improve the fairness of our tax system by deterring the use of tax avoidance strategies with no economic justification other than to reduce tax liability and shirk responsibility.

Abusive tax shelters and tax havens cost this country tens of billions of dollars each year and may be the largest single source of the $300 billion tax gap between what is owed and what is collected by the U.S. Treasury. The investigation by my colleagues on the Senate Permanent Subcommittee on Investigations found that more than half of all federal contractors may have subsidiaries in tax havens and that almost half of all foreign profits of U.S. corporations in a recent year were in tax havens. My esteemed colleagues also heard testimony that between 1–2 million individual taxpayers may be hiding funds in offshore tax havens. Many of these tax havens refuse to cooperate with U.S. tax enforcement officials.

This is not a political issue of how low or high taxes ought to be. This is a basic issue of fairness and integrity. Corporate and individual taxpayers alike must have confidence that those who disregard the law will be identified and adequately punished. Those who enforce the law need the tools and resources to do so. We cannot reasonably expect an American business to subject itself to a competitive disadvantage by following the law while watching its competitors defy the law without repercussion.

This bill cracks down on those individuals and businesses that establish virtual residences in tax havens abroad while taking unfair advantage of the very real advantages of actual residence here in the United States.

This bill clarifies that the sole purpose of a transaction cannot legitimately be to evade tax liability.

This bill increases the penalties for those who profit by manipulating and exploiting our tax laws, resulting in higher rates and greater complexity for the rest of us.

My mother taught me that there is no such thing as a free lunch—someone always has to pay. And when one of us shirks our duty to pay, the burden gets shifted to others, in this case to ordinary taxpayers and working Americans without access to sophisticated tax preparers or corporate loopholes.

This bill strengthens our ability to stop shifting the tax burden to working families. The money saved by this bill, for example, can reduce the burden on American children of unnecessary budget deficits being financed by rising debt to foreign nations.

The money saved by this bill can also be used to protect children in low income families from unfair tax increases caused by inequities in the child tax credit. In fact, this fall, I intend to introduce legislation to ensure that the child tax credit is not reduced solely because a family's income fails to keep pace with inflation. With less than half of the savings generated by this bill, we can shield more than four million children from the annual tax increase their families face as a result of stagnant wages and inflation under current law.

All of us should pay our fair share of American taxes. There is no excuse for benefiting from the laws and services, institutions and economic structure of our nation while evading your responsibility to do your part for this country. I believe it is our job to keep the system fair, and that's what this bill seeks to do.

I commend Senator LEVIN and Senator COLEMAN for their leadership on this important issue. I am proud to be a cosponsor of this bill and urge my colleagues to support it.

By Mr. ROBERTS (for himself and Mr. KENNEDY):

S. 1570. A bill to promote employment of individuals with severe disabilities through Federal Government contracting and procurement processes, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. ROBERTS. 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. 1570

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 ''Employer Work Incentive Act for Individuals with Severe Disabilities''.

SEC. 2. PURPOSE.

The purpose of this Act is to promote employment opportunities for individuals with severe disabilities, by requiring Federal agencies to offer incentives to Government contractors and subcontractors that employ substantial numbers of individuals with severe disabilities.

SEC. 3. JOBS INITIATIVE FOR INDIVIDUALS WITH SEVERE DISABILITIES.

(a) PREFERENCE FOR CONTRACTORS EMPLOYING INDIVIDUALS WITH SEVERE DISABILITIES.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

"SEC. 42. PREFERENCE FOR CONTRACTORS EMPLOYING INDIVIDUALS WITH SEVERE DISABILITIES.

''(a) PREFERENCE.—In entering into a contract, the head of an executive agency shall give a preference in the source selection process to each offeror that submits with its offer for the contract a written pledge that the contractor is an eligible business for purposes of this section.

''(b) UNIFORM PLEDGE.—The Federal Acquisition Regulation shall set forth the pledge that is to be used in the administration of this section.

''(c) RESPONSIBILITY OF THE SECRETARY OF LABOR.—(1) The Secretary of Labor shall maintain on the Internet web site of the Department of Labor a list of contractors that have submitted the pledge as described in subsection (a).

''(2) The head of each executive agency receiving a pledge as described in subsection (a) shall transmit a copy of the pledge to the Secretary of Labor.

''(d) DEFINITIONS.—In this section:

''(1)(A) The term 'eligible business' means a nonprofit or for-profit business entity that—

''(i) except as provided in subparagraph (B), demonstrates that it has established an integrated employment setting, as defined by the Secretary of Labor;

''(ii) employs individuals with severe disabilities in not less than 25 percent of the full-time equivalent positions of the business, on average;

''(iii)(I) pays wages to each of the individuals with severe disabilities at not less than the applicable rate described in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), regardless of whether the individuals are engaged in supported employment, or training, under a contract with an executive agency or a program that receives Federal funds; and

''(II) does not employ any individual with a severe disability pursuant to a special certificate issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)); and

''(iv) makes contributions for at least 50 percent of the total cost of the annual premiums for health insurance coverage for its employees.

''(B) In the case of an entity that has a contract with an executive agency in effect on the date of enactment of the Employer Work Incentive Act for Individuals with Severe Disabilities, subparagraph (A)(i) shall not apply until 3 years after that date of enactment.

''(2)(A) The term 'individual with a severe disability' means an individual who is a disabled beneficiary (as defined in section 1148(k)(2) of the Social Security Act (42 U.S.C. 1320b–19(k)(2)) or an individual who would be considered to be such a disabled beneficiary but for having income or assets in excess of the income or asset eligibility limits established under title II or XVI of the Social Security Act, respectively (42 U.S.C. 401 et seq., 1381 et seq.).

''(B) The term 'individuals with severe disabilities' means more than 1 individual with a severe disability.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end the following new item:

''Sec. 42. Preference for contractors employing individuals with severe disabilities.''.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1571. A bill to amend title 38, United States Code, to establish a comprehensive program for testing and treatment of veterans for the Hepatitis C virus; to the Committee on Veterans' Affairs.

Mr. CORZINE. Mr. President, I rise today along with my colleague, Senator LAUTENBERG, to introduce the Veterans Comprehensive Hepatitis C Health Care Act. This bill would fundamentally change the way the Department of Veterans Affairs is addressing the growing Hepatitis C epidemic, and would create a national standard for testing and treating veterans with the virus.

Hepatitis C is a disease of the liver caused by contact with the Hepatitis C virus. It is primarily spread by contact with infected blood. The CDC estimates that 1.8 percent of the population is infected with the Hepatitis C virus, and that number is much higher among veterans. Vietnam-era veterans are considered to be at greater risk because many were exposed to Hepatitis C-infected blood as a result of combat-related surgical care during the Vietnam War. In fact, data from the Veterans Administration suggests that as many as 18 percent of all veterans and 64 percent of Vietnam veterans are infected with the Hepatitis C Virus (HCV). Veterans living in the New York-New Jersey metropolitan area have the highest rate of Hepatitis C in the Nation. For many of those infected, Hepatitis C leads to liver failure, transplants, liver cancer, and death.

And yet, most veterans who have Hepatitis C don't even know it—and often do not get treatment until it's too late. Despite recent advances in treating Hepatitis C, the VA still lacks a comprehensive, consistent, uniform approach to testing and treating veterans for the virus. Only a fraction of the eight million veterans enrolled nationally in the VA Health Care System have been tested to date. Part of the problem stems from a lack of qualified, full-time medical personnel to administer and analyze the tests. Most of the 172 VA hospitals in this country have only one doctor, working a half day a week, to conduct and analyze all the tests. At this rate, it will take years to test the entire enrolled population—years that many of these veterans may not have.

To address this growing problem, I am again introducing the Veterans Comprehensive Hepatitis C Health Care Act. This legislation will improve access to Hepatitis C testing and treatment for all veterans, ensure that the VA spends all allocated Hepatitis C funds on testing and treatment, and sets new, national policies for Hepatitis C care. Congressman RODNEY FRELINGHUYSEN from New Jersey has introduced companion legislation in the House of Representatives.

The bill would improve testing and treatment for veterans by requiring annual screening tests for Vietnam-era veterans enrolled in the VA health system, and providing annual tests, upon request, to other veterans enrolled in the system. Further, it would require the VA to treat any enrolled veteran who tests positive for the Hepatitis C virus, regardless of service-connected disability status or priority group categorization. The VA would be required to provide at least one dedicated health care professional—a doctor and a nurse—at each VA Hospital for testing and treatment of this disease.

This bill would also increase the amount of money dedicated to Hepatitis C testing and treatment, and would make sure these funds are spent where they are needed most. Beginning in FY06, Hepatitis C funding would be shifted to the Specific Purpose account under the Veterans Health Administration, and would be dedicated solely for the purpose of paying for the costs associated with treating veterans with the Hepatitis C virus. The bill would allocate these funds to the 22 Veterans Integrated Service Networks (VISN) based on each VISN's Hepatitis C incidence rate, or the number of veterans infected with the virus.

In addition, this bill will end the confusing patchwork of policies governing the care of veterans with Hepatitis C throughout the nation. This legislation directs the VA to develop and implement a standardized, national Hepatitis C policy for its testing protocol, treatment options and education and notification efforts. The bill further directs the VA to develop an outreach program to notify veterans who have not been tested for the Hepatitis C virus of the need for such testing and the availability of such testing through the VA. And finally, this legislation would establish Hepatitis C Centers of Excellence in geographic areas with high incidence of Hepatitis C infection.

The VA currently lacks a comprehensive national strategy for combating this deadly disease. The Veterans Comprehensive Hepatitis C Health Care Act will ensure that veterans will finally be provided with the access to testing and treatment that they have more than earned and deserve. And, the Federal Government will actually save money in the long run by testing and treating this infection early. The alternative is much more costly treatment of end-stage liver disease and the associated complications, or other disorders.

The VA has known about the problem of Hepatitis C among veterans since 1992, but they have not acted. We must address this critical issue for the brave men and women who have placed their lives in danger to protect the United States. I urge my colleagues to join me in supporting this crucial legislation.

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. 1571

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 ''Veterans Comprehensive Hepatitis C Health Care Act''.

SEC. 2. COMPREHENSIVE HEPATITIS C HEALTH CARE TESTING AND TREATMENT PROGRAM FOR VETERANS.

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1720E the following new section:

''§ 1720F. Hepatitis C testing and treatment

''(a) INITIAL TESTING.—(1) During the 1-year period beginning on the date of the enactment of the Veterans Comprehensive Hepatitis C Health Care Act, the Secretary shall provide a blood test for the Hepatitis C virus to—

''(A) each veteran who—

''(i)(I) served in the active military, naval, or air service during the Vietnam era; or

''(II) is considered to be 'at risk,';

''(ii) is enrolled to receive care under section 1710 of this title; and

''(iii)(I) requests the test; or

''(II) is otherwise receiving a physical examination or any care or treatment from the Secretary; and

''(B) any other veteran who requests the test.

''(2) After the end of the period referred to in paragraph (1), the Secretary shall provide a blood test for the Hepatitis C virus to any veteran who requests the test.

''(b) FOLLOWUP TESTING AND TREATMENT.—In the case of any veteran who tests positive for the Hepatitis C virus, the Secretary shall provide—

''(1) such followup tests as are considered medically appropriate; and

''(2) appropriate treatment for that veteran in accordance with the national protocol for the treatment of Hepatitis C.

''(c) STATUS OF CARE.—(1) Treatment shall be provided under subsection (b) without regard to whether the Hepatitis C virus is determined to be service-connected and without regard to priority group categorization of the veteran. No copayment may be charged for treatment under subsection (b), and no third-party reimbursement may be sought or accepted, under section 1729 of this title or under any other provision of law, for testing or treatment under subsection (a) or (b).

''(2) Paragraph (1) shall cease to be in effect upon the effective date of a determination by the Secretary or by Congress that the occurrence of the Hepatitis C virus in specified veterans shall be presumed to be service-connected.

''(d) STAFFING.—(1) The Secretary shall require that each Department medical center employ at least 1 full-time gastroenterologist, hepatologist, or other qualified physician to provide tests and treatment for the Hepatitis C virus under this section.

''(2) The Secretary shall, to the extent practicable, ensure that each Department medical center has at least 1 staff member assigned to work, in coordination with Hepatitis C medical personnel, to coordinate treatment options for Hepatitis C patients and provide information and counseling for those patients and their families. Such a staff member should preferably be trained in psychology or psychiatry or be a social worker.

''(3) In order to improve treatment provided to veterans with the Hepatitis C virus, the Secretary shall provide increased training options to Department health care personnel.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1720E the following new item:

''1720F. Hepatitis C testing and treatment.''.

SEC. 3. FUNDING FOR HEPATITIS C PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PROGRAM ACCOUNT.—Beginning with fiscal year 2006, amounts appropriated for the Department of Veterans Affairs for Hepatitis C detection and treatment shall be provided, within the ''Medical Care'' account, through the ''Specific Purpose'' subaccount, rather than the ''VERA'' subaccount.

(b) ALLOCATION OF FUNDS TO VISNs.—In allocating funds appropriated for the Department of Veterans Affairs for the ''Medical Care'' account to the Veterans Integrated Service Networks, the Secretary of Veterans Affairs shall allocate funds for detection and treatment of the Hepatitis C virus based upon incidence rates of that virus among veterans (rather than based upon the overall population of veterans) in each such network.

(c) LIMITATION ON USE OF FUNDS.—Amounts appropriated for the Department of Veterans Affairs for Hepatitis C detection and treatment through the ''Specific Purpose'' subaccount may not be used for any other purpose.

SEC. 4. NATIONAL POLICY.

(a) STANDARDIZED NATIONWIDE POLICY.—The Secretary of Veterans Affairs shall develop and implement a standardized policy to be applied throughout the Department of Veterans Affairs health care system with respect to the Hepatitis C virus. The policy shall include the testing protocol for the Hepatitis C virus, treatment options, education and notification efforts, and establishment of a specific Hepatitis C diagnosis code for measurement and treatment purposes.

(b) OUTREACH.—The Secretary shall, on an annual basis, take appropriate actions to notify veterans who have not been tested for the Hepatitis C virus of the need for such testing and the availability of such testing from the Department of Veterans Affairs.

SEC. 5. HEPATITIS C CENTERS OF EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary of Veterans Affairs shall establish at least 1, and not more than 3, additional Hepatitis C centers of excellence or additional sites at which activities of Hepatitis C centers of excellence are carried out. Each such additional center or site shall be established at a Department of Veterans Affairs medical center in 1 of the 5 geographic service areas (known as a Veterans Integrated Service Network) with the highest case rate of Hepatitis C in fiscal year 1999.

(b) FUNDING.—Funding for the centers or sites established under subsection (a) shall be provided from amounts available to the Central Office of the Department of Veterans Affairs and shall be in addition to amounts allocated for Hepatitis C pursuant to section 3.

By Mr. JOHNSON (for himself and Mr. BINGAMAN):

S. 1572. A bill to amend title XIX of the Social Security Act to clarify the application of the 100 percent Federal medical assistance percentage under the Medicaid program for services provided by the Indian Health Service or an Indian tribe or tribal organization directly or through referral, contract, or other arrangement; to the Committee on Finance.

Mr. JOHNSON. Mr. President, today I am introducing legislation that will make a necessary clarification to current law regarding the application of the federal medical assistance percentage or FMAP. I am joined by Senator BINGAMAN in introducing this bill.

The Indian Health Care Improvement Act, IHCIA, provides for 100 percent Federal medical assistance percentage, FMAP, applicable to Medicaid services ''received through an Indian Health Service facility.'' This definition has created some issues for state Medicaid programs when applying for the full FMAP rate for services provided to Native Americans that are referred by an Indian Health Service facility to a non-IRS facility.

North Dakota and South Dakota have been in the courts with the Centers for Medicare and Medicaid Services or CMS over this issue. Since last year when CMS determined that the 100 percent FMAP was not allowable for referred services, North Dakota and South Dakota appealed and prevailed in a lawsuit at the district court level. The Federal appeals court has now reversed the district court's decision and affirmed that those states must repay CMS for the excess payments. While the court sided in favor of CMS, the decision states that there is a lack of clarity in the statute pertaining to how referred patients are covered through the Federal match.

CMS disallowed $4 million in payments that South Dakota's Department of Social Services had billed Medicaid through the 100 percent FMAP for Indian patients seen in non-IHS facilities through referrals. At issue is a lack of specificity regarding how far ''received through'' should extend. The most recent court decision even states ''the statutory language is susceptible to multiple interpretations.''

The legislation I am introducing today will clarify the statute and make it completely clear that any services provided under a state Medicaid plan which are referred by any Indian Health Service facility, whether operated by the IHS or by and Indian tribe or tribal organization are to be covered by the 100 percent FMAP amount. Any previous disallowance of a claim or claims by CMS will be reviewed by the Department of Health and Human Services within 90 days of enactment of this legislation and payments adjusted accordingly if the claim meets the standards set forth in this bill.

The Senate Indian Affairs Committee, of which I am a member, will be considering the IHCIA this fall. It is my hope that this legislation will be considered within the broader context of the debate on IHCIA. Clearly the Federal government has an obligation to live up to the treaties and responsibilities to our tribes and all Native Americans. I see this legislation as an extension of the obligation.

By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. ROCKEFELLER, Mrs. LINCOLN, Mrs. MURRAY, and Mr. CORZINE):

S. 1574. A bill to amend title XVIII of the Social Security Act to provide for a minimum update for physicians' services for 2006 and 2007; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I am proud to rise today with my colleagues Senators BINGAMAN, ROCKEFELLER, LINCOLN, MURRAY and CORZINE to introduce the ''Affordable Access to Medicare Providers Act.''

Securing access to affordable healthcare, especially for our Nation's seniors, is critical and it remains to be one of my top priorities. Access to healthcare is impacted by two key factors: we must have enough well qualified healthcare providers that are willing and able to accept Medicare patients, and the beneficiaries must be able to afford the premiums required to utilize their Medicare benefits. This bill addresses both of these issues—it will provide some stability in physician Medicare payment rates so that physicians can continue to offer high quality healthcare services while ensuring that the Medicare beneficiaries are not saddled with the cost and even higher premiums for physicians services.

Medicare was written to cover the most basic health care for seniors. When the original bill passed in 1965, the legislation's conference report explicitly stated that the intent of the program is to provide adequate ''medical aid . . . for needy people, and should ''make the best of modem medicine more readily available to the aged.''

While the Medicare Modernization Act provided some improvements such as: It also had some unfortunate consequences on the Medicare beneficiaries in Washington State. Medicare payments per beneficiary will be further exacerbated and continue to penalize Washington state for our efficient healthcare system. Fifty-seven percent of Washington state physicians are limiting or dropping Medicare patients from their practices. Washington falling to 45th in the Nation on reimbursements will not help the situation.

A survey conducted by the Medicare Payment Advisory Council, MedPAC, found that 22 percent of patients already have some problems finding a primary care physician and 27 percent report delays getting an appointment. Physicians are the foundation of our Nation's health care system. Continual cuts, or even the threat of repeated cuts, put Medicare patient access to physicians' services at risk. They also threaten to destabilize the Medicare program and create a ripple effect across other programs. Indeed, Medicare cuts jeopardize access to medical care for millions of our active duty military family members and military retirees because their TRICARE insurance ties its payment rates to Medicare.

Now we are told by the Medicare board of Trustees that if Congress does not act by the end of the year, the Medicare physician payment formula will likely produce a 4.3 percent decrease next year with similar reductions to follow in the years to come. The Medicare Board of Trustees also estimates that the cost of providing medical care will increase by an estimated 15 percent over the next six years, while current reimbursement levels are scheduled to drop by an estimated 26 percent over the same time period.

After adjusting for inflation, Medicare payments to physicians in 2013 will be less than half of what they were in 1991. That declining reimbursement rate would likely mean a growing percentage of family physicians would decline to see new Medicare patients and, as a result, access to care would suffer.

Washington stands to lose $39 million in 2006 and 1.9 billion from 2006–2014 if these cuts go through. For physicians in Washington, the cuts over this period will average $13,000 per year for each physician in the State.

The American Medical Association conducted a survey of physicians in February and March 2005 concerning significant Medicare pay cuts from 2006 through 2013 (as forecast in the 2004 Medicare Trustees report). Results from the survey indicate that if the projected cuts in Medicare physician payment rates begin in 2006: more than a third of physicians (38 percent) plan to decrease the number of new Medicare patients they accept; more than half of physicians (54 percent) plan to defer the purchase of information technology, which is necessary to make value-based purchasing work; a majority of physicians (53 percent) will be less likely to participate in a Medicare Advantage plan; about a quarter of physicians plan to close satellite offices (24 percent) and/or discontinue rural outreach services (29 percent) if payments are cut in 2006. If the pay cuts continue through 2013, close to half of physicians plan to close satellite offices (42 percent) and/or discontinue rural outreach (44 percent); and one-third of physicians (34 percent) plan to discontinue nursing home visits if payments are cut in 2006. By the time the cuts end, half (50 percent) of physicians will have discontinued nursing home visits.

Physicians can simply not absorb cuts these cuts and still deliver high quality care. We must ensure our doctors have the resources they need to ensure that our seniors have access to their physicians.

There have been efforts made to address the physician payment issue however; they have not addressed the impact on Medicare beneficiaries and their premiums. I'm concerned some of the proposals would result in an additional burden being placed on the Medicare beneficiary by way of a $24 billion increase in part B premiums in 2006 and a $60 billion increase in 2007.

This happens because by law, the monthly Part B premium is set at 25 percent of the part B Trust Fund costs. Administrative or legal changes to increase physician payment rates that don't include a hold-harmless clause, increase Medicare part B expenditures and ultimately, the Part B premiums paid by beneficiaries.

This is not a viable solution either as the beneficiaries are already being hit with premium increases and additional cost sharing due to implementation of the prescription drug benefit. For this reason, along with my colleagues, I have chosen to introduce legislation that provides the update for physician reimbursement rates but also holds the part B premiums harmless.

I look forward to working my colleagues to pass this legislation to ensure that access to care for our seniors is preserved and enhanced.

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. 1574

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 ''Affordable Access to Medicare Providers Act of 2005''.

SEC. 2. MINIMUM UPDATE FOR PHYSICIANS' SERVICES FOR 2006 AND 2007.

(a) MINIMUM UPDATE.—

(1) IN GENERAL.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraphs:

''(6) UPDATE FOR 2006.—The update to the single conversion factor established in paragraph (1)(C) for 2006 shall not be less than 2.7 percent.

''(7) UPDATE FOR 2007.—

''(A) IN GENERAL.—The update to the single conversion factor established in paragraph (1)(C) for 2007 shall not be less than the product of—

''(i) 1 plus the Secretary's estimate of the percentage change in the value of the input price index (as provided under subparagraph (B)(ii)) for 2007 (divided by 100); and

''(ii) 1 minus the Secretary's estimate of the productivity adjustment factor under subparagraph (C) for 2007.

''(B) INPUT PRICE INDEX.—

''(i) ESTABLISHMENT.—Taking into account the mix of goods and services included in computing the medicare economic index (referred to in the fourth sentence of section 1842(b)(3)), the Secretary shall establish an index that reflects the weighted-average input prices for physicians' services for 2006. Such index shall only account for input prices and not changes in costs that may result from other factors (such as productivity).

''(ii) ANNUAL ESTIMATE OF CHANGE IN INDEX.—The Secretary shall estimate, before the beginning of 2007, the change in the value of the input price index under clause (i) from 2006 to 2007.

''(C) PRODUCTIVITY ADJUSTMENT FACTOR.—The Secretary shall estimate, and cause to be published in the Federal Register not later than November 1, 2006, a productivity adjustment factor for 2007 that reflects the Secretary's estimate of growth in multifactor productivity in the national economy, taking into account growth in productivity attributable to both labor and nonlabor factors. Such adjustment may be based on a multi-year moving average of productivity (based on data published by the Bureau of Labor Statistics).''.

(2) CONFORMING AMENDMENT.—Section 1848(d)(4)(B) of the Social Security Act (42 U.S.C. 1395w–4(d)(4)(B)) is amended, in the matter preceding clause (i), by striking ''and

paragraph (5)'' and inserting ''paragraphs (5), (6), and (7)''.

(b) EXCLUSION OF COSTS FROM DETERMINATION OF PART B MONTHLY PREMIUM.—Section 1839(g) (42 U.S.C. 1395r(g)) is amended—

(1) in paragraph (1), by striking ''and'' at the end;

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

(3) by adding at the end the following new paragraph:

''(3) the application of the amendments made by section 2(a) of the Affordable Access to Medicare Providers Act of 2005 (relating to a minimum update for physicians' services in 2006 and 2007).''.

Mr. BINGAMAN (for himself, Mr. CORNYN, Ms. MIKULSKI, Ms. COLLINS, Mr. JEFFORDS, Mrs. MURRAY, Mr. REED, Mr. NELSON of Nebraska, Ms. CANTWELL, Mr. DURBIN, Mr. CORZINE, Ms. LANDRIEU, Mr. KERRY, Mr. LAUTENBERG, and Mr. INOUYE):

S. 1575. A bill to amend the Public Health Service Act to authorize a demonstration program to increase the number of doctorally-prepared nurse faculty; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, today I introduce legislation that will help address the critical nurse faculty shortage facing our Nation today. The Bureau of Labor statistics estimates that 1,000,000 new and replacement nurses will be needed by 2012. With a nurse faculty workforce that averages 53.5 years of age, we cannot and must not wait any longer to address nurse faculty shortages. Quite simply, we need to educate more doctoral level faculty, or we, as a Nation, will not have enough trained nurses to meet the needs of our aging society.

In a 2002 report, the Commission on Higher Education and the University of New Mexico Health Sciences Center assembled nursing educators, healthcare providers, business organizations, professional associations, legislators, and New Mexico state agencies to develop a statewide strategic framework for addressing New Mexico's nursing shortage. The initiative revealed that 72 percent of hospitals have curtailed services, 38 percent of home care agencies have refused referrals, 15 percent of long term care facilities have refused admissions, and public health offices have decreased public health services. The number one priority listed in the statewide initiative was to double the number of licensed nursing graduates in the State. And yet, this one simple priority is not so simple. With a doctoral nurse faculty of 53.4 years of age, on average, and 46 vacant nurse faculty positions, in New Mexico, the necessary expansion of programs is not possible. New Mexico is not alone in facing nurse and nurse faculty shortages. The nationwide nursing shortage is expected to more than triple, because the average age of the workforce is near retirement, the population is aging and has increasing healthcare needs, and the shortage is one that affects the entire nation.

There is a well-known saying, ''a problem clearly stated is a problem half solved.'' In 2004–2005, over 30,000 qualified nursing school applicants were not accepted into nursing baccalaureate programs. Estimates from the National League for Nursing indicate that over 123,000 qualified applications could not be accommodated in registered nurse educational programs in 2004. The primary reason students are not admitted is lack of trained faculty, funds, and program resources. The real nursing workforce problem that we need to address at the current time is lack of an adequate number of qualified nurse faculty members.

The Nurse Faculty Education Act will amend the Nurse Reinvestment Act, P.L. 107–205, to help alleviate the faculty shortage by providing funds to help nursing schools increase enrollment and graduation from nursing doctoral programs. The act will increase partnering opportunities, enhance cooperative education, help support marketing outreach, and strengthen mentoring programs. The bill will increase the number of nurses who complete nursing doctoral programs and seek employment as faculty members and nursing leaders in academic institutions. By addressing the faculty shortage, we are addressing the nursing shortage.

The provisions of the Nurse Faculty Education Act are vital to overcoming nursing workforce challenges. By addressing nurse faculty shortages, we will enhance both access to care and the quality of care. Our families and our Nation will be well-served by integration of the Nurse Faculty Education Act into the Nurse Reinvestment Act.

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

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

S. 1575

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 ''Nurse Faculty Education Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Nurse Reinvestment Act (Public Law 107-205) has helped to support students preparing to be nurse educators. Yet, nursing schools nationwide are forced to deny admission to individuals due to lack of qualified nurse faculty.

(2) According to the February 2004 Monthly Labor Review of the Bureau of Labor Statistics, more than 1,000,000 new and replacement nurses will be needed by 2012.

(3) According to the American Association of Colleges of Nursing, in the 2004-2005 academic year, 29,425 individuals, or 35 percent of the qualified applicants were not accepted into nursing baccalaureate programs. 2,748 potential nursing master's students and over 200 nurses qualified for admission to doctoral programs were not accepted. Estimates from the National League of Nursing indicate that over 123,000 qualified applications could not be accommodated in associate degree, diploma, and baccalaureate registered nurse educational programs in 2004.

(4) Seventy-six percent of schools report insufficient faculty as the primary reason for not accepting qualified applicants. The primary reasons for lack of faculty are lack of funds to hire new faculty, inability to identify, recruit and hire faculty in the current competitive job market, and lack of nursing faculty available in different geographic areas.

(5) Despite the fact that 75 percent of graduates of doctoral nursing program enter education roles (versus about 5 percent of graduates of nursing master's programs), the 93 doctoral programs nationwide produce only 400 graduates. This annual graduation rate is insufficient to meet current needs for nurse faculty. In keeping with other professional academic disciplines, nurse faculty at colleges and universities are typically doctorally-prepared.

(6) With the average age of nurse faculty at retirement at 62.5 years of age and the average age of doctorally-prepared faculty currently at 53.5 years, the health care system faces unprecedented workforce and health access challenges with current and future shortages of deans, nurse educators, and nurses.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Part D of title VIII of the Public Health Service Act (42 U.S.C. 296p et seq.) is amended by adding at the end the following:

''SEC. 832. NURSE FACULTY EDUCATION.

''(a) ESTABLISHMENT.—The Secretary, acting through the Health Resources and Services Administration, shall establish a Nurse Faculty Education Program to ensure an adequate supply of nurse faculty through the awarding of grants to eligible entities to—

''(1) provide support for the hiring of new faculty, the retaining of existing faculty, and the purchase of educational resources;

''(2) provide for increasing enrollment and graduation rates for students from doctoral programs; and

''(3) assist graduates from the entity in serving as nurse faculty in schools of nursing;

''(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

''(1) be a school of nursing that offers a doctoral degree in nursing in a State or territory;

''(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

''(3) develop and implement a plan in accordance with subsection (c);

''(4) agree to submit an annual report to the Secretary that includes updated information on the doctoral program involved, including information with respect to—

''(A) student enrollment;

''(B) student retention;

''(C) graduation rates;

''(D) the number of graduates employed part-time or full-time in a nursing faculty position; and

''(E) retention in nursing faculty positions within 1 year and 2 years of employment;

''(5) agree to permit the Secretary to make on-site inspections, and to comply with the requests of the Secretary for information, to determine the extent to which the school is complying with the requirements of this section. and

''(6) meet such other requirements as determined appropriate by the Secretary.

''(c) USE OF FUNDS.—Not later than 1 year after the receipt of a grant under this section, an entity shall develop and implement a plan for using amounts received under this

grant in a manner that establishes not less than 2 of the following:

''(1) Partnering opportunities with practice and academic institutions to facilitate doctoral education and research experiences that are mutually beneficial.

''(2) Partnering opportunities with educational institutions to facilitate the hiring of graduates from the entity into nurse faculty, prior to, and upon completion of the program.

''(3) Partnering opportunities with nursing schools to place students into internship programs which provide hands-on opportunity to learn about the nurse faculty role.

''(4) Cooperative education programs among schools of nursing to share use of technological resources and distance learning technologies that serve rural students and underserved areas.

''(5) Opportunities for minority and diverse student populations (including aging nurses in clinical roles) interested in pursuing doctoral education.

''(6) Pre-entry preparation opportunities including programs that assist returning students in standardized test preparation, use of information technology, and the statistical tools necessary for program enrollment.

''(7) A nurse faculty mentoring program.

''(8) A Registered Nurse baccalaureate to Ph. D. program to expedite the completion of a doctoral degree and entry to nurse faculty role.

''(9) Career path opportunities for 2nd degree students to become nurse faculty.

''(10) Marketing outreach activities to attract students committed to becoming nurse faculty.

''(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to entities from States and territories that have a lower number of employed nurses per 100,000 population.

''(e) NUMBER AND AMOUNT OF GRANTS.—Grants under this section shall be awarded as follows:

''(1) In fiscal year 2006, the Secretary shall award 10 grants of $100,000 each.

''(2) In fiscal year 2007, the Secretary shall award an additional 10 grants of $100,000 each and provide continued funding for the existing grantees under paragraph (1) in the amount of $100,000 each.

''(3) In fiscal year 2008, the Secretary shall award an additional 10 grants of $100,000 each and provide continued funding for the existing grantees under paragraphs (1) and (2) in the amount of $100,000 each.

''(4) In fiscal year 2009, the Secretary shall provide continued funding for each of the existing grantees under paragraphs (1) through (3) in the amount of $100,000 each.

''(5) In fiscal year 2010, the Secretary shall provide continued funding for each of the existing grantees under paragraphs (1) through (3) in the amount of $100,000 each.

''(f) LIMITATIONS.—

''(1) PAYMENT.—Payments to an entity under a grant under this section shall be for a period of not to exceed 5 years.

''(2) IMPROPER USE OF FUNDS.—An entity that fails to use amounts received under a grant under this section as provided for in subsection (c) shall, at the discretion of the Secretary, be required to remit to the Federal Government not less than 80 percent of the amounts received under the grant.

''(g) REPORTS.—

''(1) EVALUATION.—The Secretary shall conduct an evaluation of the results of the activities carried out under grants under this section.

''(2) REPORTS.—Not later than 3 years after the date of the enactment of this section, the Secretary shall submit to Congress an interim report on the results of the evaluation conducted under paragraph (1). Not later than 6 months after the end of the program under this section, the Secretary shall submit to Congress a final report on the results of such evaluation.

''(h) STUDY.—

''(1) IN GENERAL.—Not later than 3 years after the date of the enactment of this section, the Comptroller General of the United States shall conduct a study and submit a report to Congress concerning activities to increase participation in the nurse educator program under the section.

''(2) CONTENTS.—The report under paragraph (1) shall include the following:

''(A) An examination of the capacity of nursing schools to meet workforce needs on a nationwide basis.

''(B) An analysis and discussion of sustainability options for continuing programs beyond the initial funding period.

''(C) An examination and understanding of the doctoral degree programs that are successful in placing graduates as faculty in schools of nursing.

''(D) An analysis of program design under this section and the impact of such design on nurse faculty retention and workforce shortages.

''(E) An analysis of compensation disparities between nursing clinical practitioners and nurse faculty and between higher education nurse faculty and higher education faculty overall.

''(F) Recommendations to enhance faculty retention and the nursing workforce.

''(i) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—For the costs of carrying out this section (except the costs described in paragraph (2), there are authorized to be appropriated $1,000,000 for fiscal year 2006, $2,000,000 for fiscal year 2007, and $3,000,000 for each of fiscal years 2008 through 2010.

''(2) ADMINISTRATIVE COSTS.—For the costs of administering this section, including the costs of evaluating the results of grants and submitting reports to the Congress, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2006 through 2010.''.

By Mr. BURNS (for himself, Mr. DORGAN, Mr. JOHNSON, Mr. DAYTON, Mr. BAUCUS, and Mr. CONRAD):

S. 1579. A bill to amend the Federal Insecticide, Fungicide, and Rodentcide Act to permit the distribution and sale of certain pesticides that are registered in both the United States and another country; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. BURNS. Mr. President, today I am introducing, along with my colleague Senator DORGAN, a bill that addresses a persistent inequity in the agriculture industry.

Since the passage of the North American Free Trade Agreement—in fact, even before then—Montana farmers have battled against false barriers to trade that harm their ability to compete in a global market. While most inputs to production agriculture—fertilizer, seed, equipment—can move easily across the U.S.-Canadian border, pesticides remain segmented. The pesticide industry has a vested interest in preserving these borders, because the barriers allow for price distortions that harm producers on both sides of the border.

The legislation I am introducing today is designed to tear down these barriers, and begin the process of harmonizing the pesticide registration process. The bill establishes a process by which interested growers can petition the Environmental Protection Agency to require a pesticide to be jointly labeled, if the product is already registered in both countries. See—there's the problem. We are talking here about the exact same chemical, produced by the same company, but priced at very different levels. Because the products have two different labels, the lower-price chemical remains out of reach of U.S. growers. When Montana farmers have to compete against Canadian growers who are getting their pesticides at a substantially lower price, that is an example of free trade gone wrong. In addition, this bill gives EPA the authority needed to require a joint label on a new product that is being introduced into the market.

It is important to note that this legislation is not restricted to Canada, so as not to violate U.S. trade agreements. The bill authorizes EPA to enter into negotiations to harmonize regulatory processes and requirements with other countries, as appropriate. The United States and Canada have been working for over a decade to streamline their registration processes, harmonize the requirements, and develop protocols for work sharing and joint reviews. A lot of groundwork has already been done between the U.S. and Canada, so we can move quickly towards development of a joint label between our two countries.

And there is no reason not to. Again, we are talking about the exact same product, being sold at two different prices to growers who have to compete against each other in the world market. NAFTA was supposed to tear down borders between the U.S., Canada, and Mexico, and yet this barrier remains. It is an irritant to Montana growers who are farming along the border.

It is also a problem for Canadian growers, and I look forward to working with Canada to resolve this issue in a mutually beneficial way. There are times when pesticides are cheaper in the U.S., and U.S. growers often have access to a wider variety of products. So there is a shared interest in tearing down this barrier to free trade.

A recent study done by Montana State University underscored this point. For 13 pesticides widely used in Montana and Alberta, seven were less expensive in Canada, five were less expensive in the U.S., and one, glyphosate, showed little or no difference in price. False barriers that prevent pesticides from moving across the border are creating significant price distortions in the market, and those barriers need to come down.

Certainly, there are a number of factors that impact pricing, but there can be no doubt that trade barriers allow price differentiation, and that's not right. There will always be some price fluctuations—they exist now, between

states, even between communities in the same state. But for a person farming along the Montana-Alberta border, who can see his competitor across that border and knows that his competitor's input costs are lower for no other reason than a trade barrier that should have been eliminated, that's going to bother him. If the guy one town over has better prices on pesticides, I can drive to get those, or negotiate with my local dealer. But if the guy across the border has better prices, I have no options, no bargaining power. That's just not right.

This is not an anti-industry bill. Growers need the crop protection industry, and it is important that the research and innovation in that sector continue. This bill will help to streamline regulatory processes and reduce the obstacles to registration, by requiring only one label. It simplifies distribution systems, by allowing companies to have just one label for the same product, even when it is being sold in two countries. So while this bill will address the sort of price distortions that farmers on the northern border find unfair, it also reduces cost to industry, and will ideally result in smoother registration processes.

In fact, representatives of the crop protection industry have said that the solution to trade barriers along the northern border is a joint label, and have testified in support of regulatory harmonization before the Senate Agriculture Committee. Since the passage of NAFTA, a technical working group on pesticide harmonization has worked diligently on the development of joint registration and labeling procedures, and has enjoyed the cooperation of the industry in those discussions. This bill accomplishes what both the industry and the producers have said is needed: regulatory harmonization between two nations, joint registration, and joint labeling.

This legislation is supported by the National Association of Wheat Growers, the National Barley Growers Association, the U.S. Durum Growers Association, the National Farmers Union, the Montana Grain Growers Association, and the North Dakota Grain Growers Association. It is time these barriers be eliminated. If we are going to have free trade in grain, then we need free train in the input costs for production agriculture. This bill accomplishes that. I ask Members to take a close look at this bill, and consider it seriously. Our growers deserve an end to the practice of artificially inflating the price of pesticides simply to take advantage of false barriers.

Mr. DORGAN. Mr. President, today I am reintroducing bipartisan legislation to remedy a long-standing and glaring inequity in our so-called free-trade system. There are significant and costly differences in prices between agricultural chemicals sold in Canada and similar—and in some cases, identical—chemicals sold in the United States. This disparity in prices puts an extra burden on American farmers, and it puts them at a distinct disadvantage when it comes to competing in the world market.

Currently, American and Canadian farmers use many of the same products on their fields. These products use the same chemicals, are made by the same company, and are sometimes even marketed under the same name; but they are often sold at a much lower cost north of the border.

For example, U.S. farmers use the pesticide Garlon, which is sold as Remedy in Canada. It is manufactured by the same company, with the same chemicals. But American farmers pay $8.02 more per acre than their Canadian counterparts. The pesticide Puma, which is widely used on wheat and barley, costs farmers in North Dakota $2.82 more per acre than Canadian farmers pay for Puma 120 Super, which is the same product, made by the same company. That means North Dakota farmers paid nearly $7.9 million more to treat their fields with Puma than they would have paid if they could have accessed it at prices paid by Canadian farmers.

This legislation would address that inequity by setting up a process that would allow American farmers to access these chemicals, which are lower priced, but identical to those already approved for use in the United States.

Data collected by the North Dakota Department of Agriculture show that farmers in just my home State of North Dakota alone would have saved nearly $11 million last year if they had been able to access agricultural chemicals at Canadian prices.

But this problem does not just affect farmers in North Dakota. Farmers all across the northern tier of the United States would benefit if they were able to access U.S.-approved pesticides at Canadian prices.

I have come before the Senate time and again to talk about the hidden inequities of trade. For trade to benefit our country, it must be fair. But the pricing inequities in the Canadian and U.S. pesticide markets are a failure of our current trade system.

This legislation I am introducing today, along with the Senator from Montana, Mr. BURNS, authorizes the Environmental Protection Agency to require that certain agricultural chemicals which have already been approved in the U.S. carry a joint label, which would allow them to cross the border freely.

The new labels would still be under the strict scrutiny of the Environmental Protection Agency, as would the use of these products. The EPA would continue to insure the health and safety standards that govern the products we use in our food supply. This bill keeps those priorities intact.

This bill is not an ending but a beginning. Hidden trade barriers and schemes riddle the fabric of our trade agreements. We cannot continue to accept trade practices that, on the one hand, hamstring Americans, and on the other hand, unduly promote our competitors. We ought not accept second best all of the time, and this bill is a step in bringing American producers back to a level playing field.

By Mr. AKAKA (for himself, Mr. REID, Mr. DURBIN, Mr. BINGAMAN, Mr. CORZINE, Mrs. MURRAY, Mr. KENNEDY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. INOUYE, Mr. PRYOR, Ms. MIKULSKI, Mr. OBAMA, Mr. DODD, Mr. LIEBERMAN, and Mrs. CLINTON):

S. 1580. A bill to improve the health of minority individuals; to the Committee on Finance.

Mr. AKAKA. Mr. President, I am proud to introduce the Healthcare Equality and Accountability Act, along with my colleagues Senators REID, DURBIN, BINGAMAN, CORZINE, MURRAY, KENNEDY, LANDRIEU, LAUTENBERG, INOUYE, PRYOR, MIKULSKI, OBAMA, DODD, LIEBERMAN, and CLINTON. I want to thank them, as well as my colleagues in the other body, for all of their contributions to this important legislation.

This bill will improve access to and the quality of health care for indigenous people and racial and ethnic minorities who often lack access and suffer disproportionately from certain diseases. It is essential that we expand and improve the health care safety net so that everyone can access the health care services that they need. This legislation will expand health coverage and includes provisions that will increase access to culturally-appropriate and relevant services for our communities.

In addition to improving treatments for the diseases that disproportionately effect indigenous people and racial and ethnic minorities, we need to also focus on preventing these diseases in the first place. This legislation will help combat heart disease, asthma, HIV/AIDS, and diabetes. Diabetes is a disease that disproportionately affects Pacific Islanders, including Native Hawaiians. Among populations in Hawaii, Native Hawaiians had the highest age-adjusted mortality rates due to diabetes for the years 2000 to 2002.

Statistics for U.S.-related Pacific Jurisdictions are difficult to obtain due to underdeveloped reporting and data collection systems. However, available data suggests that diabetes and its complications are growing problems that are creating a greater burden on the health care delivery systems of the Pacific Jurisdictions. For example, in the Republic of the Marshall Islands, mortality data for 1996–2000 reflects that complications from diabetes are the leading cause of death and accounted for 30 percent of all deaths during that period. In American Samoa, mortality data for 1998–2001 shows that diabetes is the third leading cause of death accounting for nine percent of all deaths for that period. In

Guam, diabetes has been identified as the fifth leading cause of death and the prevalence rate has been estimated to be seven times that of the United States. Local governments have had to focus on expensive off-island tertiary hospital care and curative services, resulting in the reduction of funds available for community-based primary preventive care and pnblic health services throughout the Pacific Jurisdictions.

There is a need for more comprehensive diabetes awareness education efforts targeted at communities with Native Hawaiian and other Pacific Islander populations. Papa Ola Lokahi, a non-profit agency created in 1988 that functions as a consortium with private and state agencies in Hawaii to improve the health status of Native Hawaiians and other Pacific Islanders, has established the Pacific Diabetes Today Resource Center. Pacific Diabetes Today is designed to provide community members with basic knowledge and skills to plan and implement community-based diabetes prevention and control activities. Since 1998, the Pacific Diabetes Today program has provided training and technical assistance to 11 communities in Hawaii and the Pacific Jurisdictions. However, more can be done to ensure that the diabetic health needs of Native Hawaiians and other Pacific Islanders are being met.

Community-based diabetes programs need to be better integrated into the larger infrastructure of diabetes prevention and control. Comprehensive, specific programs are needed to mobilize Native Hawaiian and other Pacific Islander communities and develop appropriate interventions for diabetes complications prevention and improve diabetes care. My bill, therefore, includes a provision that would authorize a comprehensive program to prevent and better manage the overlapping health problems that are often related to diabetes such as obesity, hypertension, and cardiovascular disease.

I am also pleased that a provision has been included in this bill that would restore Medicaid eligibility for Freely Associated States, FAS, citizens in the United States. The political relationship between the United States and the FAS is based on mutual support. In exchange for the United States having strategic denial and a defense veto over the FAS, the United States provides military and economic assistance to the Republic of Marshall Islands, Federated States of Micronesia and Palau with the goal of assisting these countries in achieving economic self-sufficiency following the termination of their status as U.N. Trust territories. Pursuant to the Compact, FAS citizens are allowed to freely enter the United States. They come to seek economic opportunity, education, and health care. Unfortunately, FAS citizens lost many of their public benefits as a result of the Personal Responsibility and Work Opportunity Act, PRWORA, of 1996, including Medicaid coverage. FAS citizens were previously eligible for Medicaid as aliens permanently residing under color of law in the United States.

After the enactment of PRWORA, the State of Hawaii was informed that it could not claim Federal matching funds for services rendered to FAS citizens. Since then, the State of Hawaii, and the territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, CNMI, have continued to incur substantial costs to meet the health care needs of FAS citizens that have immigrated to these areas.

The Federal Government must provide Federal resources to help States meet the healthcare needs of the FAS citizens that have been brought about by a Federal commitment. It is inequitable for a state or territory to be responsible for all of the financial burden of providing necessary social services to individuals that are residing there due to a Federal commitment. Mr. President, FAS citizen eligibility must be restored. Furthermore, the State of Hawaii, and the territories of Guam, American Samoa, and the CNMI, should be reimbursed for all of the Medicaid expenses of FAS citizens, and must not be responsible for the costs of providing essential health care services for FAS citizens.

Finally, there is another provision in this bill is of extreme importance to the State of Hawaii, taken from legislation that my colleague from Hawaii, Senator INOUYE, has introduced. The provision would provide a 100 percent Federal Medicaid Assistance Percentage, FMAP, of health care costs of Native Hawaiians who receive health care from Federally Qualified Health Centers or the Native Hawaiian Health Care System. This would provide similar treatment for Native Hawaiians as already granted to Native Alaskans by the Indian Health Service or tribal organizations. The increased FMAP will ensure that Native Hawaiians have access to the essential health services provided by community health centers and the Native Hawaiian Health Care System.

This bill would significantly improve the quality of life for indigenous people and ethnic and racial minorities, and I encourage all of my colleagues to support this legislation.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator AKAKA and Senator REID in introducing the Healthcare Equality and Accountability Act. Our goal is to eliminate racial and ethnic disparities in health care, so that all citizens, regardless of income or background, have the best possible health care our Nation can provide.

The Institute of Medicine has documented the severity of ethnic and racial disparities in health care. People of color face unequal treatment and unequal outcomes in heart disease, infant mortality, HIV/AIDS, diabetes, asthma, and other serious illnesses. The health care needs of communities of color are often more severe than those of white Americans. Minorities often face significant obstacles, including poverty and the lack of health insurance. We need to attack disparities in all their forms.

A critical first step is to see that health insurance and decent health care are available and affordable for all Americans. This bill strengthens the health care safety net by expanding access to Medicaid and the Children's Health Insurance Program, and improving health care for Indian tribes, migrant workers, and farm workers.

The bill also contains essential measures for removing cultural and linguistic barriers to good care. The United States is a Nation of immigrants, and all Americans deserve to understand what their doctor is telling them. Interpreter and translator services save money in the long run by avoiding harm when patients do not understand their diagnosis or the health advice they receive. Health care institutions deserve to be reimbursed for providing these critically needed services.

Other important initiatives to reduce health disparities include diversifying the health care workforce. Minority providers are more likely to serve low-income communities of color, and this bill addresses the shortage of these providers.

Federal agencies can do more in this battle too. The bill requires all Federal health agencies to develop specific plans to eliminate disparities. The bill expands the Office of Civil Rights and the Office of Minority Health at the Department of Health and Human Services, and creates minority health offices within the Food and Drug Administration and the Centers for Medicare and Medicaid Services.

In addition, the bill strengthens investments in prevention and behavioral health and improves research and data collection. It strengthens health institutions that serve communities of color, provides grants for community initiatives, and funds programs on chronic disease. In each of these ways, we can reduce the gap in health care between people of color and whites, so that all Americans can benefit from the remarkable advances being made in modern health care.

It's time for Congress, the administration, and the Nation to end the shameful inequality in health care that plagues the lives of so many people in our society. This bill contains numerous provisions intended to make that happen, and it can have a major impact on the lives of millions of Americans. I commend Senators AKAKA and REID for their leadership on this important health issue. We intend to do all we can in this Congress to see that effective legislation to combat health disparities is enacted into law and funded adequately to do the job.

By Mr. BINGAMAN (for himself and Mr. BUNNING):

S. 1581. A bill to facilitate the development of science parks, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleague, Senator BUNNING, to introduce the Science Park Administration Act of 2005.

This legislation is a result of my travels to Taiwan, China, Hong Kong, and India to learn more about their science and technology policies, as well as to discover how they have successfully encouraged similar industries and research entities to work so closely together in these research parks.

Let me discuss some findings from my fact finding trips regarding the role of science parks in economic development.

Last summer, I visited the Hong Kong Science and Technology Park which the Hong Kong Government is funding at $423 million. By 2006, this investment will help construct 10 buildings, over 1 million square feet of office and laboratory space, that will cluster IC design, photonics, biotechnology and information technology.

This science park, like the others I visited in Asia, teams up with the local universities on collaborative research efforts. It has an incubation center with 83 start-up companies, and provides them low cost space, business planning, marketing, and employee training, as well as research and development grants from the Hong Kong Government to overcome the ''valley of death'' challenges so many new technology companies frequently face.

One of the most impressive features of this park is the Integrated Circuit, IC, Design and Development Support Center. This is a user facility with shared state of the art equipment to support the entire IC product development cycle, from initiation design to production release. For example, as many as 16 vendors can combine their designs onto a single wafer, thus reducing initial prototype foundry costs by 94 percent.

I was also briefed on the Hong Kong Cyber Port, another science park devoted solely to information technology, IT, and multimedia companies that trains employees and conducts collaborative research. The Hong Kong Government is investing $2 billion between 2000 and 2007 to house 10,000 IT professionals and 100 IT companies in over 1 million square feet of work space.

The Hong Kong Government's combined investment in developing the infrastructure to attract science-based companies to these two parks is about $400 million annually over a period of six years. On a comparable GDP scale, the United States would have to spend $31 billion annually for that same period for a total of $186 billion.

This past January, I spent 10 days in India reviewing their science and technology policies, and was particularly impressed with their development of Software Technology Parks. These parks were first developed in 1991 by the Ministry of Information Technology and Communications as a semi-autonomous entity to promote India's developing IT industry. They provide the infrastructure in terms of space, internet access, tax breaks and-one stop clearances for government approvals. Generous tax considerations exempt companies until 2010 from corporate income tax and excise duties on purchased goods.

As my colleagues are aware, the growth rate of India's IT industry have been phenomenal. There are now more than 1,000 companies in 44 such software parks in India, the largest located around Hyderabad and Bangalore considered to be India's ''Silicon Valleys.''. Last year these parks had a combined net export value of $50 billion, up 37 percent from the prior year.

Companies such as Infosys, which maintains software for large firms overseas, are located in these parks, and their 2004 revenues jumped by 50 percent. Last year, they received 1.2 million online job applications; they gave a standardized test to 300,000, interviewed 30,000, and hired 10,000. Much of India's success in the IT industry can be attributed not only to their universities, but to the government's decision 1991 to establish these Software Technology Parks.

Building on that success, and with the government's encouragement, these Software Parks are now set to launch biotechnology parks.

Taiwan's success in the global market place is a result of building the Hsinchu Science Park in the 1980s. Today, Hsinchu has over 100,000 technically trained people, 325 companies, 6 national labs and $22 billion in gross revenue. The government has duplicated these parks in two other locations of the island. The science parks being built throughout Asia are modeled after Taiwan's Hsinchu Science Park.

Let me note that these Asian science parks have several common features:

First the Government commits to provide a first-class infrastructure to accommodate all levels of science-based companies, from small start-ups in incubators to large manufacturing plants.

Second, these parks align companies of similar interests to mutually reinforce each other along the supply and management chain.

Third, the Government provides virtually one-stop shopping for government approvals, even including loans.

Fourth, the Government provides tax incentives, usually in the form of waiving taxes on the first several years of profit, and capital gains on acquired stock.

Fifth, and most importantly, the Government takes the long view of partnering with the local governments to ensure that a trained workforce is readily available to support the parks' growth, by teaming with universities and national laboratories.

If we fail to learn from these Asian success stories, we are in danger of losing the very high technology industries we first started, because the low cost manufacturing operations in Asia are now moving up the value chain to research intensive industries, which the Government facilitates by building science parks.

That leads me to the legislation we are introducing today.

The premise of the legislation is straight forward. It does not pick industry winners or losers. Rather, it simply provides a synergistic science-based infrastructure that companies may compete for and thrive in. Just like in Asia, the government acts as a facilitator not micromanager.

The legislation first proposes a series of competitively peer-reviewed science park planning grants to local governments.

A revolving loan fund in six regional centers is proposed to allow existing science parks to upgrade their infrastructure.

The legislation proposes a loan guarantee fund for the construction of new science parks.

Additionally, the legislation proposes a Science Park Venture Capital Fund similar to SBIC's, that would guarantee debentures issued by the Fund to raise capital for start-up companies trying to bridge that valley of death, where ideas must move from the laboratory to working prototype.

Moreover, the legislation proposes several tax incentives to locate in the park. The full cost of property placed in the park could be deducted in the year it was purchased without regard to the existing caps. Many times high-tech equipment is expensive and loses its value quickly, and this provision would cover that loss. The legislation proposes a flat 20 percent R&D tax credit without regard to any expenditure in the base period to spur greater research investment on a broader range of projects. Finally, the legislation ensures that the status of tax exempt bonds used to fund science park infrastructure remain tax exempt eliminating the uncertainty associated with its interpretation under the Bayh-Dole Act.

I believe this legislation combines many of the best ideas I have discovered on my Asian fact finding trips. I hope it attracts the support from both sides of the aisle as a truly bipartisan effort as we need this type of infrastructure investment more than ever before if we are to successfully compete in today's global environment.

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. 1581

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 ''Science Park Administration Act of 2005''.

SEC. 2. DEVELOPMENT OF SCIENCE PARKS.

(a) FINDING.—Section 2 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) is amended by adding at the end the following new paragraph:

''(12) It is in the best interests of the Nation to encourage the formation of science parks to promote the clustering of innovation through high technology activities.''.

(b) DEFINITION.—Section 4 of such Act (15 U.S.C. 3703) is amended by adding at the end the following new paragraphs:

''(14) 'Science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

''(15) 'Business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

''(16) 'Science park infrastructure' means facilities that support the daily economic activity of a science park.''.

(c) PROMOTION OF DEVELOPMENT OF SCIENCE PARKS.—Section 5(c) of such Act (15 U.S.C. 3704(c)) is amended—

(1) in paragraph (14), by striking ''and'' at the end;

(2) in paragraph (15), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(16) promote the formation of science parks.''.

(d) SCIENCE PARKS.—Such Act is further amended by adding at the end the following new section:

''SEC. 24. SCIENCE PARKS.

''(a) DEVELOPMENT OF PLANS FOR CONSTRUCTION OF SCIENCE PARKS.—

''(1) IN GENERAL.—The Secretary shall award grants for the development of feasibility studies and plans for the construction of new or expansion of existing science parks.

''(2) LIMITATION ON AMOUNT OF GRANTS.—The amount of a grant awarded under this subsection may not exceed $750,000.

''(3) AWARD.—

''(A) COMPETITION REQUIRED.—The Secretary shall award any grant under this subsection pursuant to a full and open competition.

''(B) ADVERTISING.—The Secretary shall advertise any competition under this paragraph in the Commerce Business Daily.

''(C) SELECTION CRITERIA.—The Secretary shall publish the criteria to be utilized in any competition under this paragraph for the selection of recipients of grants under this subsection. Such criteria shall include requirements relating to—

''(i) the number of jobs to be created at the science park each year for a period of 5 years;

''(ii) the funding to be required to construct or expand the science park over the first 5 years;

''(iii) the amount and type of cost matching by the applicant;

''(iv) the types of businesses and research entities expected in the science park and surrounding community;

''(v) letters of intent by businesses and research entities to locate in the science park;

''(vi) the capacity of the science park for expansion over a period of 25 years;

''(vii) the quality of life at the science park for employees at the science park;

''(viii) the capability to attract a well trained workforce to the science park;

''(ix) the management of the science park;

''(x) expected risks in the construction and operation of the science park;

''(xi) risk mitigation;

''(xii) transportation and logistics;

''(xiii) physical infrastructure, including telecommunications;

''(xiv) ability to collaborate with other science parks throughout the world.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2006 through 2011, $7,500,000 to carry out this subsection.

''(b) REVOLVING LOAN PROGRAM FOR DEVELOPMENT OF SCIENCE PARK INFRASTRUCTURE.—

''(1) IN GENERAL.—The Secretary shall make grants to six regional centers for the development of existing science park infrastructure through the operation of revolving loan funds by such centers.

''(2) SELECTION OF CENTERS.—

''(A) IN GENERAL.—The Secretary shall select the regional centers to be awarded grants under this subsection utilizing such criteria as the Secretary shall prescribe.

''(B) CRITERIA.—The criteria prescribed by the Secretary under this paragraph shall include criteria relating to revolving loan funds and revolving loan fund operators under paragraph (4), including—

''(i) the qualifications of principal officers;

''(ii) non-Federal cost matching requirements; and

''(iii) conditions for the termination of loan funds.

''(3) LIMITATION ON LOAN AMOUNT.—The amount of any loan for the development of existing science park infrastructure that is funded under this subsection may not exceed $3,000,000.

''(4) REVOLVING LOAN FUNDS.—

''(A) IN GENERAL.—A regional center receiving a grant under this subsection shall fund the development of existing science park infrastructure through the utilization of a revolving loan fund.

''(B) OPERATION AND INTEGRITY.—The Secretary shall prescribe regulations to maintain the proper operation and financial integrity of revolving loan funds under this paragraph.

''(C) EFFICIENT ADMINISTRATION.—The Secretary may—

''(i) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

''(ii) assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation, and a third party may retain assets of the fund to defray costs related to liquidation; and

''(iii) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

''(D) TREATMENT OF ACTIONS.—An action taken by the Secretary under this paragraph with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

''(E) PRESERVATION OF SECURITIES LAWS.—

''(i) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to subparagraph (C)(iii) shall be treated as exempted securities for purposes of the Securities Act of 1933 or the Securities Exchange Act of 1934, unless exempted by rule or regulation of the Securities and Exchange Commission.

''(ii) PRESERVATION.—Except as provided in clause (i), no provision of this paragraph or any regulation issued by the Secretary under this paragraph shall supersede or otherwise affect the application of the securities laws (as such term is defined in section 2(a)(47) of the Securities Exchange Act of 1934) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization thereunder.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2006 through 2011, $60,000,000 to carry out this subsection.

''(c) LOAN GUARANTEES FOR SCIENCE PARK INFRASTRUCTURE.—

''(1) IN GENERAL.—The Secretary shall guarantee up to 80 percent of the loan amount for loans exceeding $10,000,000 for projects for the construction of science park infrastructure.

''(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

''(A) $50,000,000 with respect to any single project; and

''(B) $500,000,000 with respect to all projects.

''(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection based upon the ability of the recipient to collateralize the loan amount through bonds, equity, property, and other such criteria as the Secretary shall prescribe.

''(4) TERMS AND CONDITIONS FOR LOAN GUARANTEES.—For purposes of this section, the loans guaranteed shall be subject to such terms and conditions as the Secretary may prescribe, except that—

''(A) the final maturity of such loans made or guaranteed shall not exceed (as determined by the Secretary) the lesser of—

''(i) 30 years and 32 days, or

''(ii) 90 percent of the useful life of any physical asset to be financed by such loan;

''(B) no loan made or guaranteed may be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default;

''(C) no loan may be guaranteed unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States;

''(D) no loan may be guaranteed if the income from such loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded;

''(E) any guarantee shall be conclusive evidence that said guarantee has been properly obtained, that the underlying loan qualified for such guarantee, and that, but for fraud or material misrepresentation by the holder, such guarantee shall be presumed to be valid, legal, and enforceable;

''(F) the Secretary shall prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans;

''(G) the Secretary must find that there is a reasonable assurance of repayment before extending credit assistance; and

''(H) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

''(5) PAYMENT OF LOSSES.—For purposes of this section—

''(A) IN GENERAL.—If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Secretary may require, the Secretary determines that

the holder has suffered a loss, the Secretary shall pay to such holder the percentage of such loss (not more than 80 percent) specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this section.

''(B) ENFORCEMENT OF RIGHTS.—The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

''(C) FORBEARANCE.—Nothing in this section may be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined under the Federal Credit Reform Act of 1990) is available.

''(D) MANAGEMENT OF PROPERTY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right in the Secretary's discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this section.

''(6) REVIEW.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

''(7) TERMINATION.—No loan may be guaranteed under this subsection after September 30, 2011.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

''(A) such sums as may be necessary for the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of loans under this subsection, and

''(B) $6,000,000 for administrative expenses for fiscal year 2006 and such sums as necessary thereafter for administrative expenses in subsequent years.

''(d) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Academy shall evaluate, on a tri-annual basis, the activities under this section.

''(2) TRI-ANNUAL REPORT.—Under the agreement under paragraph (1), the Academy shall submit to the Secretary a report on its evaluation of science park development under that paragraph. Each report may include such recommendations as the Academy considers appropriate for additional activities to promote and facilitate the development of science parks in the United States.

''(e) TRI-ANNUAL REPORT.—Not later than March 31 of every third year, the Secretary shall submit to Congress a report on the activities under this section during the preceding 3 years, including any recommendations made by the National Academy of Sciences under subsection (d)(2) during such period. Each report may include such recommendations for legislative or administrative action as the Secretary considers appropriate to further promote and facilitate the development of science parks in the United States.

''(f) REGULATIONS.—

''(1) REGULATIONS.—Consistent with Office of Management and Budget Circular A-129, 'Policies for Federal Credit Programs and Non-Tax Receivables', the Secretary shall prescribe regulations to carry out this section.

''(2) DEADLINE.—The Secretary shall prescribe such regulations not later than one year after the date of enactment of this section.''.

SEC. 3. SCIENCE PARK VENTURE CAPITAL FUND PILOT PROGRAM.

Title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.) is amended by adding at the end the following:

''PART C—SCIENCE PARK VENTURE CAPITAL FUND PILOT PROGRAM

''SEC. 1. DEFINITIONS.

''As used in this part, the following definitions shall apply:

''(1) BUSINESS OR INDUSTRIAL PARK.—The term 'Business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

''(2) EQUITY CAPITAL.—The term 'equity capital' means common or preferred stock or a similar instrument, including subordinated debt with equity features.

''(3) HIGH-TECHNOLOGY.—The term 'high-technology' means any of the high technology industries in the North American Industrial Classification System, as listed in table 8–25 of the National Science Board publication entitled 'Science and Engineering Indicators 2004', or as listed in any succeeding editions of such publication.

''(4) LEVERAGE.—The term 'leverage' includes—

''(A) debentures purchased or guaranteed by the Administrator;

''(B) participating securities purchased or guaranteed by the Administrator; and

''(C) preferred securities outstanding as of the date of enactment of this part.

''(5) MEZZANINE FINANCING.—The term 'mezzanine financing' means late-stage venture capital usually associated with the final round of financing prior to an initial public offering.

''(6) OPERATIONAL ASSISTANCE.—The term 'operational assistance' means management, marketing, and other technical assistance that assists high-technology start-up companies with business development.

''(7) PARTICIPATION AGREEMENT.—The term 'participation agreement' means an agreement, between the Administrator and a company granted final approval by the Administrator under section 374(e), that—

''(A) details the operating plan and investment criteria of the company; and

''(B) requires the company to make investments in high-technology start-up companies within a science park.

''(8) PRIVATE CAPITAL.—The term 'private capital'—

''(A) means the total of—

''(i)(I) the paid-in capital and paid-in surplus of a corporate science park venture capital company;

''(II) the contributed capital of the partners of a partnership science park venture capital company; or

''(III) the equity investment of the members of a limited liability company science park venture capital company; and

''(ii) unfunded binding commitments from investors that meet criteria established by the Administrator to contribute capital to the science park venture capital company, except that—

''(I) unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage; and

''(II) leverage shall not be funded based on the commitments; and

''(B) does not include—

''(i) any funds borrowed by a science park venture capital company from any source;

''(ii) any funds obtained through the issuance of leverage; or

''(iii) any funds obtained directly or indirectly from Federal, State, or local government, except for—

''(I) funds obtained from the business revenues of any federally chartered or government-sponsored enterprise established before the date of enactment of this part;

''(II) funds invested by an employee welfare benefit plan or pension plan; and

''(III) any qualified nonprivate funds, if the investors of such funds do not directly or indirectly control the management, board of directors, general partners, or members of the science park venture capital company.

''(9) PROGRAM.—The term 'Program' means the Science Park Venture Capital Program established under section 372.

''(10) QUALIFIED NONPRIVATE FUNDS.—The term 'qualified nonprivate funds' means—

''(A) any funds directly or indirectly invested in any applicant or science park venture capital company on or before the date of enactment of this part, by any Federal agency other than the Administration, under a law explicitly mandating the inclusion of those funds in the definition of the term private capital; and

''(B) any funds invested in any applicant or science park venture capital company by 1 or more entities of any State, including any guarantee extended by any such entity, in an aggregate amount not to exceed 33 percent of the private capital of the applicant or science park venture capital company.

''(11) SCIENCE PARK.—The term 'science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

''(12) SCIENCE PARK VENTURE CAPITAL.—The term 'science park venture capital' means equity capital investments in high-technology start-up businesses located in science parks to foster economic development and technological innovation.

''(13) SCIENCE PARK VENTURE CAPITAL COMPANY.—The term 'science park venture capital company' means a company that—

''(A) meets the requirements under section 373;

''(B) has been granted final approval by the Administrator under section 374(e); and

''(C) has entered into a participation agreement with the Administrator.

''(14) START-UP COMPANY.—The term 'start-up company' means a company that has developed intellectual property protection of research and development, but has not reached the stage associated with equity or securitized investments typical of venture capital or mezzanine financing.

''(15) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

''SEC. 2. ESTABLISHMENT.

''There is established a Science Park Venture Capital Program, under which the Administrator may—

''(1) enter into participation agreements with companies granted final approval under section 374(e);

''(2) guarantee the debentures issued by science park venture capital companies under section 375; and

''(3) award grants to science park venture capital companies under section 377.

"SEC. 3. REQUIREMENTS FOR SCIENCE PARK VENTURE CAPITAL COMPANIES.

''(a) ORGANIZATION.—For purposes of this part, a science park venture capital company—

''(1) shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered, or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities authorized by this part;

''(2) if incorporated, shall have succession for a period of not less than 30 years unless earlier dissolved by the shareholders of the company;

''(3) if a limited partnership or a limited liability company, shall have succession for a period of not less than 10 years; and

''(4) shall possess the powers reasonably necessary to perform the functions and conduct the activities.

''(b) ARTICLES.—The articles of any science park venture capital company—

''(1) shall specify in general terms—

''(A) the purposes for which the company is formed;

''(B) the name of the company;

''(C) the area or areas in which the operations of the company are to be carried out;

''(D) the place where the principal office of the company is to be located; and

''(E) the amount and classes of the shares of capital stock of the company;

''(2) may contain any other provisions consistent with this part that the science park venture capital company may determine to be appropriate to adopt for the regulation of the business of the company and the conduct of the affairs of the company; and

''(3) shall be subject to the approval of the Administrator.

''(c) CAPITAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of each science park venture capital company shall be not less than—

''(A) $5,000,000; or

''(B) $10,000,000, with respect to each science park venture capital company authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administrator under this part.

''(2) EXCEPTION.—The Secretary may, in the discretion of the Administrator, and based on a showing of special circumstances and good cause, permit the private capital of science park venture capital company described in paragraph (1)(B) to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that the action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

''(3) ADEQUACY.—In addition to the requirements under paragraph (1), the Administrator shall—

''(A) determine whether the private capital of each science park venture capital company is adequate to ensure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with the articles of the company;

''(B) determine that the science park venture capital company will be able to comply with the requirements of this part; and

''(C) ensure that the science park venture capital company is designed primarily to meet equity capital needs of the businesses in which the company invests and not to compete with traditional financing by commercial lenders of high-technology startup businesses.

''(d) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each science park venture capital company licensed after the date of enactment of this part is sufficiently diversified from, and unaffiliated with, the ownership of the company so as to ensure independence and objectivity in the financial management and oversight of the investments and operations of the company.

"SEC. 4. SELECTION OF SCIENCE PARK VENTURE CAPITAL COMPANIES.

''(a) ELIGIBILITY.—A company is eligible to participate as a science park venture capital company in the Program if the company—

''(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

''(2) has a management team in the science park with experience in development financing or relevant venture capital financing;

''(3) has a primary objective of economic development of the science park and its surrounding geographic area; and

''(4) promotes innovation of science and technology in the science park.

''(b) APPLICATION.—Any eligible company that desires to participate as a science park venture capital company in the Program shall submit an application to the Administrator, which shall include—

''(1) a business plan describing how the company intends to make successful venture capital investments in start up companies within the science park;

''(2) a description of the qualifications and general reputation of the management of the company;

''(3) an estimate of the ratio of cash to in-kind contributions of binding commitments to be made to the company under the Program;

''(4) a description of the criteria to be used to evaluate whether, and to what extent, the company meets the objectives of the Program;

''(5) information regarding the management and financial strength of any parent firm, affiliated firm, or other firm essential to the success of the business plan of the company; and

''(6) such other information as the Administrator may require.

''(c) STATUS.—Not later than 90 days after the initial receipt by the Administrator of an application under this section, the Administrator shall provide to the applicant a written report that describes the status of the applicants and any requirements remaining for completion of the application.

''(d) MATTERS CONSIDERED.—In reviewing and processing any application under this section, the Administrator—

''(1) shall determine if—

''(A) the applicant meets the requirements under subsection (e); and

''(B) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this part;

''(2) shall take into consideration—

''(A) the need for and availability of financing for high-technology start-up companies in the science park in which the applicant is to commence business;

''(B) the general business reputation of the owners and management of the applicant; and

''(C) the probability of successful operations of the applicant, including adequate profitability and financial soundness;

''(3) shall not take into consideration any projected shortage or unavailability of grant funds or leverage; and

''(4) shall emphasize the promotion of regional science park venture capital companies to serve multiple research parks in order to avoid geographic dilution of management and capital.

''(e) APPROVAL; LICENSE.—The Administrator may approve an applicant to operate as a science park venture capital company under this part and license the applicant as a science park venture capital company, if—

''(1) the Administrator determines that the application satisfies the requirements under subsection (b);

''(2) the Administrator approves—

''(A) the area in which the science park venture capital company is to conduct its operations; and

''(B) the establishment of branch offices or agencies (if authorized by the articles); and

''(3) the applicant enters into a participation agreement with the Administrator.

"SEC. 5. DEBENTURES.

''(a) GUARANTEES.—The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any science park venture capital company.

''(b) TERMS AND CONDITIONS.—The Administrator may make guarantees under this section on such terms and conditions as the Administrator determines to be appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

''(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

''(d) MAXIMUM GUARANTEE.—The Administrator may—

''(1) guarantee the debentures issued by a science park venture capital company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed the lesser of—

''(A) 300 percent of the private capital of the company, or

''(B) $100,000,000; and

''(2) provide for the use of discounted debentures.

"SEC. 6. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

''(a) ISSUANCE.—The Administrator may issue trust certificates representing ownership of all or a part of debentures issued by a science park venture capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

''(b) GUARANTEE.—

''(1) IN GENERAL.—The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

''(2) LIMITATION.—Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

''(3) PREPAYMENT OR DEFAULT.—

''(A) IN GENERAL.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool.

''(B) INTEREST.—Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee.

''(C) REDEMPTION.—At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

''(c) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a

trust certificate issued by the Administrator or its agents under this section.

''(d) SUBROGATION AND OWNERSHIP RIGHTS.—

''(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

''(2) OWNERSHIP RIGHTS.—No provision of Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which 1 or more trust certificates are issued under this section.

''(e) MANAGEMENT AND ADMINISTRATION.—

''(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

''(2) CONTRACTING OF FUNCTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including—

''(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

''(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

''(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines necessary to fully protect the interests of the United States.

''(C) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

''(D) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a book entry or other electronic form of registration for trust certificates issued under this section.

''SEC. 7. OPERATIONAL ASSISTANCE GRANTS.

''(a) IN GENERAL.—

''(1) GRANTS AUTHORIZED.—The Administrator may award grants to science park venture capital companies and other entities to provide operational assistance to high-technology start-up companies financed, or expected to be financed, by such companies.

''(2) TERMS.—Grants under this subsection shall be made over a period not to exceed 10 years, under such other terms as the Administrator may require.

''(3) GRANT AMOUNT.—Each grant awarded under this subsection shall be equal to the lesser of—

''(A) 10 percent of the private capital raised by the science park venture capital company; or

''(B) $1,000,000.

''(4) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a science park venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to science park venture capital companies under this part.

''(b) SUPPLEMENTAL GRANTS.—

''(1) IN GENERAL.—The Administrator may award supplemental grants to science park venture capital companies and other entities, under such terms as the Administrator may require, to provide additional operational assistance to start-up companies financed, or expected to be financed, by such companies or entities.

''(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide a matching contribution equal to 50 percent of the amount of the supplemental grant from non-Federal cash or in-kind resources.

''(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a science park venture capital company or other entity.

''SEC. 8. REPORTING REQUIREMENTS.

''(a) SCIENCE PARK VENTURE CAPITAL COMPANIES.—Each science park venture capital company shall provide the Administrator with such information as the Administrator may require, including information relating to the criteria described in section 374(b)(4).

''(b) PUBLIC REPORTS.—

''(1) IN GENERAL.—The Administrator shall prepare and make available to the public an annual report on the Program, which shall include detailed information on—

''(A) the number of science park venture capital companies licensed by the Administrator during the previous fiscal year;

''(B) the aggregate amount of leverage that science park venture capital companies have received from the Federal Government during the previous fiscal year;

''(C) the aggregate number of each type of leveraged instruments used by science park venture capital companies during the previous fiscal year, and how each such number compares to the number in previous fiscal years;

''(D) for the previous fiscal year, the number of—

''(i) science park venture capital company licenses surrendered; and

''(ii) the number of science park venture capital companies placed in liquidation;

''(E) the amount and type of leverage each such company has received from the Federal Government;

''(F) the amount of losses sustained by the Federal Government as a result of operations under this part during the previous fiscal year and an estimate of the total losses that the Federal Government can reasonably expect to incur as a result of the operations during the current fiscal year;

''(G) actions taken by the Administrator to maximize recoupment of funds of the Federal Government expended to implement and administer the Program during the previous fiscal year and to ensure compliance with the requirements of this part, including implementing regulations;

''(H) the amount of Federal Government leverage that each licensee received in the previous fiscal year and the types of leverage instruments used by each licensee;

''(I) for each type of financing instrument, the sizes, types of geographic locations, and other characteristics of the small business investment companies using the instrument during the previous fiscal year, including the extent to which the investment companies have used the leverage from each instrument to make loans or equity investments in science parks; and

''(J) the actions of the Administrator to carry out this part.

''(2) PROHIBITION.—In compiling the report required under paragraph (1), the Administrator may not—

''(A) compile the report in a manner that permits identification of any particular type of investment by an individual science park venture capital company in which a science park venture capital company invests; or

''(B) release any information that is prohibited under section 1905 of title 18, United States Code.

''SEC. 9. EXAMINATIONS.

''(a) IN GENERAL.—Each science park venture capital company that participates in the Program shall be subject to examinations made at the direction of the Administrator, in accordance with this section.

''(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under this section may be conducted with the assistance of a private sector entity that has the qualifications and expertise necessary to conduct such an examination.

''(c) COSTS.—

''(1) IN GENERAL.—The Administrator may assess the cost of an examination under this section, including compensation of the examiners, against the science park venture capital company examined.

''(2) PAYMENT.—Any science park venture capital company against which the Administrator assesses costs under this subsection shall pay the costs assessed.

''(d) DEPOSIT OF FUNDS.—Funds collected under this section—

''(1) shall be deposited in the account that incurred the costs for carrying out this section;

''(2) shall be made available to the Administrator to carry out this section, without further appropriation; and

''(3) shall remain available until expended.

''SEC. 10. BANK PARTICIPATION.

''(a) IN GENERAL.—Except as provided under subsection (b), any national bank, any member bank of the Federal Reserve System, and, to the extent permitted under applicable State law, any insured bank that is not a member of such system, may invest in—

''(1) any science park venture capital company; or

''(2) any entity established to invest solely in science park venture capital companies.

''(b) LIMITATION.—No bank described in subsection (a) may make investments described in that subsection that are greater than 5 percent of the capital and surplus of the bank.

''SEC. 11. FEES.

''(a) IN GENERAL.—Except as provided under subsection (b), the Administrator may charge such fees as it determines to be appropriate with respect to any guarantee or grant issued under this part.

''(b) EXCEPTION.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section. Any agent of the Administrator may collect a fee, upon the approval of the Administrator, for the functions described in section 376(e)(2).

''SEC. 12. APPLICABLE LAW.

''(a) IN GENERAL.—The provisions relating to New Market Venture Capital companies under sections 361 through section 366 shall apply to science park venture capital companies.

''(b) PURCHASE OF GUARANTEED OBLIGATIONS.—Section 318 shall not apply to any debenture issued by a science park venture capital company under this part.

''SEC. 13. REGULATIONS.

''Not later than 12 months after the date of enactment of this part, the Administrator shall issue such regulations as it determines necessary to carry out this part.

''SEC. 14. AUTHORIZATIONS OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to the Administration for each of the fiscal years 2006 through 2011, to remain available until expended—

''(1) such sums as may be necessary for the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of debentures under this part; and

''(2) $50,000,000 to make grants under this part.

''(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited pursuant to section 362(d) may only be used for—

''(1) examinations under section 362; and

''(2) other oversight activities of the Program.''.

SEC. 4. TAX INCENTIVES FOR INVESTMENT IN SCIENCE PARKS.

(a) EXPENSING.—

(1) IN GENERAL.—Section 179(d) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(11) APPLICATION OF SECTION TO PROPERTY PLACED IN SERVICE IN SCIENCE PARKS.—

''(A) IN GENERAL.—In the case of any section 179 property placed in service in any science park, this section shall be applied without regard to paragraphs (1) and (2) of subsection (b).

''(B) SCIENCE PARK.—

''(i) IN GENERAL.—The term 'science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

''(ii) BUSINESS OR INDUSTRIAL PARK.—The term 'business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to property placed in service after the date of the enactment of this Act.

(b) TAX CREDIT FOR RESEARCH ACTIVITIES.—

(1) IN GENERAL.—Section 41(a) of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1)(B), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the qualified research expenses paid or incurred by the taxpayer during the taxable year in carrying on any trade or business located in a science park.''.

(2) SCIENCE PARK.—Section 41(f) of such Code (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) SCIENCE PARK.—

''(A) IN GENERAL.—The term 'science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

''(B) BUSINESS OR INDUSTRIAL PARK.—The term 'business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.''.

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

(c) PRIVATE BUSINESS USE OF A BOND-FINANCED FACILITY DOES NOT INCLUDE PERFORMANCE OF RESEARCH USING FEDERAL GOVERNMENT FUNDING IN SUCH FACILITY.—

(1) IN GENERAL.—Subparagraph (A) of section 141(b)(6) of the Internal Revenue Code of 1986 (defining private business use) is amended by inserting ''or use in the performance of research using, in whole or in part, funds of the United States or any agency or instrumentality thereof'' before ''shall not be taken into account''.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by this subsection shall apply to any use on or after the date of the enactment of this Act.

(B) NO INFERENCE.—Nothing in the amendment made by this subsection shall be construed to create any inference with respect to the use of tax-exempt bond financed facilities before the effective date of such amendment.

By Mr. CHAMBLISS (for himself and Mr. ROBERTS):

S. 1582. A bill to reauthorize the United States Grain Standards Act, to facilitate the official inspection at export port locations of grain required or authorized to be inspected under such Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CHAMBLISS. Mr. President, today I introduce legislation to reauthorize the U.S. Grain Standards Act, which expires September 30, 2005.

The Secretary of Agriculture was granted authority by Congress to establish grain standards in 1916. Sixty years later, Congress authorized the Federal Grain Inspection Service in order to ensure the development and maintenance of uniform U.S. standards, to develop inspection and weighing procedures for grain in domestic and export trade, and to facilitate grain marketing. The U.S. grain inspection system is recognized worldwide for its accuracy and reliability.

On May 25, 2005, the Agriculture Committee held a hearing to review the reauthorization of the Act during which the industry expressed its desire to provide authority to the United States Department of Agriculture, USDA, to utilize third-party entities at export terminals. Inspections at these terminals are currently conducted by Federal inspectors or employees of State Departments of Agriculture. Industry proposes, and commodity groups support, granting USDA the authority to utilize third-party entities at U.S. export terminals in order to improve competitiveness of U.S. agriculture worldwide.

Congress has a unique opportunity to provide this authority to USDA, and I have included the industry's proposal in this legislation. USDA estimates that by 2009, 75 percent of Federal grain inspectors will be eligible for retirement. The short-term staffing situation facing USDA should ease the Department's transition in delivering inspection and weighing services at export terminals.

In addition to providing USDA the authority to use third-party entities at export terminal locations, this 5-year reauthorization bill that I am introducing contains measures to ensure the integrity of the Federal grain inspection system. The bill clearly states that official inspections continue to be the direct responsibility of USDA. USDA will also have the ability to issue rules and regulations to further enhance the work and supervision of these entities. The ability of the U.S. to increase long-term competitiveness coupled with a system that can maintain its strong reputation worldwide certainly holds great potential for success.

This bill is identical to the reauthorization bill recently considered and approved unanimously by the Committee on Agriculture in the House of Representatives. It is my hope that this measure will garner equivalent support in this body as reauthorization of the U.S. Grain Standards Act moves forward.

By Mr. SMITH (for himself, Mr. DORGAN, and Mr. PRYOR):

S. 1583. A bill to amend the Communications Act of 1934 to expand the contribution base for universal service, establish a separate account within the universal service fund to support the deployment of broadband service in unserved areas of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senators DORGAN and PRYOR to introduce the ''Universal Service for the 21st Century Act.'' For more than 70 years, the preservation and advancement of universal service has been a fundamental goal of our telecommunications laws. In order to ensure the long term sustainability of the fund and to add support for broadband services that are increasingly important to our Nation's economic development, our bill reforms the system of payments into the universal service fund and creates a $500 million account to bring broadband to unserved areas of the country.

The achievements of the universal service fund are undeniable. Affordable telephone services are available in many remote and high cost areas of the country, including Oregon, because of the fund. Large and small telecommunications carriers serve sparsely populated rural communities and schools and libraries receive affordable Internet services because of the fund. The need for a robust and sustainable universal service system certainly remains, but it has become increasingly clear that major reforms are needed if the fund is to meet the evolving communications needs of the American people.

In Section 706 of the Telecommunications Act of 1996, Congress directed the Federal Communications Commission, FCC, and the States to encourage deployment of advanced telecommunications services, including broadband, on a reasonable and timely basis. Earlier this month, the FCC released data on broadband connections that shows significant gains, in deployment. According to the report, there were nearly 29 million broadband connections throughout the country in 2004.

But we can do more. Although there have been well documented successes in the deployment of broadband services in many parts of the country, others remain unserved, whether due to geography, low population density or other reasons. These largely rural areas deserve the benefits of an advanced communications infrastructure and increasingly need that infrastructure to build and maintain robust economies.

Accordingly, to meet the needs of these communities, we have created a $500 million ''Broadband for Unserved Areas Account'' within the universal service fund that will be used solely for the deployment of broadband networks in unserved areas. This funding will be awarded competitively based on merit to a single broadband provider in each unserved area. The FCC will establish the guidelines for this new account. All technologies will be eligible for funding.

The bill also directs the FCC to update its definition of broadband to ensure that our communications policies are forward-looking and competitive with the speeds and capabilities available in other industrialized countries. The FCC will revisit its definition annually and will prepare reports for Congress regarding gains in broadband penetration in unserved areas and the need for an increase or decrease in funding.

In addition, the bill addresses a crisis in the structure of the universal service fund which has threatened its long term viability. Currently, the burden of universal service fund contributions is placed on a limited class of carriers, causing inequities in the system and incentives to avoid contribution. As demands on the fund increase, contributors are being forced to pay more. This tension threatens to cripple the fund. Our bill therefore authorizes and directs the FCC to establish a permanent mechanism to support universal service.

By reforming the universal service system and spurring the deployment of broadband services, our legislation will ensure that our Nation's communications infrastructure will continue to grow, and to be the robust and connected network that Americans expect and deserve.

I ask that the bill be printed in the RECORD.

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

S. 1583

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 ''Universal Service for the 21st Century Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The preservation and advancement of universal service is a fundamental goal of the Communications Act of 1934 and the Telecommunications Act of 1996.

(2) Access throughout the nation to high-quality and advanced telecommunications and information services is essential to secure the many benefits of our modern society.

(3) As the Internet becomes a critical element of any economic and social growth, universal service should shift from sustaining voice grade infrastructure promoting the development of efficient and advanced networks that can sustain advanced communications services.

(4) The current structure established by the Federal Communications Commission has placed the burden of universal service support on only a limited class of carriers, causing inequities in the system, incentives to avoid contribution, and a threat to the long term sustainability of the universal service fund.

(5) Current fund contributors are paying an increasing portion of their interstate and international service revenue into the universal service fund.

(6) Any fund contribution system should be equitable, nondiscriminatory and competitively neutral, and the funding mechanism must be sufficient to ensure affordable communications services for all.

SEC. 3. UNIVERSAL SERVICE FUND CONTRIBUTION REQUIREMENTS.

(a) INCLUSION OF INTRASTATE REVENUES.—Section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)) is amended—

(1) by striking ''Every'' and inserting ''Notwithstanding section 2(b) of this Act, a'';

(2) by striking ''interstate'' each place it appears; and

(3) by adding at the end ''Nothing in this subsection precludes a State from adopting rules or regulations to preserve and advance universal service within that State as permitted by section 2(b) and subsections (b) and (f) of this section.''.

(b) UNIVERSAL SERVICE PROCEEDING.—

(1) PROCEEDING.—The Federal Communications Commission shall initiate a proceeding, or take action pursuant to any proceeding on universal service existing on the date of enactment of this Act, to establish a permanent mechanism to support universal service, that will preserve and enhance the long term financial stability of universal service, and will promote the public interest.

(2) CRITERIA.—In establishing such a permanent mechanism, the Commission may include collection methodologies such as total telecommunications revenues, the assignment of telephone numbers and any successor identifier, connections (which could include carriers with a retail connection to a customer), and any combination thereof if the methodology—

(A) promotes competitive neutrality among providers and technologies;

(B) to the greatest extent possible ensures that all communications services that are capable of supporting 2-way voice communications be included in the assessable base for universal service support;

(C) takes into account the impact on low volume users, and proportionately assesses high volume users, through a capacity analysis or some other means; and

(D) ensures that a carrier is not required to contribute more than once for the same transaction, activity, or service.

(3) EXCLUDED PROVIDERS.—If a provider of communications services that are capable of supporting 2-way voice communications would not contribute under the methodology established by the Commission, the Commission shall require such a provider to contribute to universal service under an equitable alternative methodology if exclusion of the provider from the contribution base would jeopardize the preservation, enhancement, and long term sustainability of universal service.

(4) DEADLINE.—The Commission shall complete the proceeding and issue a final rule not more than 6 months after the date of enactment of this Act.

SEC. 4. INTERCARRIER COMPENSATION.

(a) JURISDICTION.—Notwithstanding section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)), the Federal Communications Commission shall have exclusive jurisdiction to establish rates for inter-carrier compensation payments and shall establish rules providing a comprehensive, unified system of inter-carrier compensation, including compensation for the origination and termination of intrastate telecommunications traffic.

(b) CRITERIA.—In establishing these rules, and in conjunction with its action in its universal service proceeding under section 3, the Commission, in consultation with the Federal-State Joint Board on Universal Service, shall—

(1) ensure that the costs associated with the provision of interstate and intrastate telecommunications services are fully recoverable;

(2) examine whether sufficient requirements exist to ensure traffic contains necessary identifiers for the purposes of inter-carrier compensation; and

(3) to the greatest extent possible, minimize opportunities for arbitrage.

(c) SUFFICIENT SUPPORT.—The Commission should, to the greatest extent possible, ensure that as a result of its universal service and inter-carrier compensation proceedings, the aggregate amount of universal service support and inter-carrier compensation provided to local exchange carriers with fewer than 2 percent of the Nation's subscriber lines will be sufficient to meet the just and reasonable costs of such local exchange carriers.

(d) NEGOTIATED AGREEMENTS.—Nothing in this section precludes carriers from negotiating their own inter-carrier compensation agreements.

(e) DEADLINE.—The Commission shall complete the pending Intercarrier Compensation proceeding in Docket No. 01–92 and issue a final rule not more than 6 months after the date of enactment of this Act.

SEC. 5. ESTABLISHMENT OF BROADBAND ACCOUNT WITHIN UNIVERSAL SERVICE FUND.

Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by inserting after section 254 the following:

''SEC. 254A. BROADBAND FOR UNSERVED AREAS ACCOUNT.

''(a) ACCOUNT ESTABLISHED.—

''(1) IN GENERAL.—There shall be, within the universal service fund established pursuant to section 254, a separate account to be known as the 'Broadband for Unserved Areas Account'.

''(2) PURPOSE.—The purpose of the account is to provide financial assistance for the deployment of broadband communications services to unserved areas throughout the United States.

''(b) IMPLEMENTATION.—

''(1) IN GENERAL.—The Commission shall by rule establish—

''(A) guidelines for determining which areas may be considered to be unserved areas for purposes of this section;

''(B) criteria for determining which facilities-based providers of broadband communications service, and which projects, are eligible for support from the account;

''(C) procedural guidelines for awarding assistance from the account on a merit-based and competitive basis;

''(D) guidelines for application procedures, accounting and reporting requirements, and other appropriate fiscal controls for assistance made available from the account; and

''(E) a procedure for making funds in the account available among the several States on an equitable basis.

''(2) STUDY AND ANNUAL REPORTS ON UNSERVED AREAS.—

''(A) IN GENERAL.—Within 6 months after the date of enactment of the Universal Service for the 21st Century Act, the Commission shall conduct a study to determine which areas of the United States may be considered to be 'unserved areas' for purposes of this section. For purposes of the study and for purposes of the guidelines to be established under subsection (a)(1), the availability of broadband communications services by satellite in an area shall not preclude designation of that area as unserved if the Commission determines that subscribership to the service in that area is de minimis.

''(B) ANNUAL UPDATES.—The Commission shall update the study annually.

''(C) REPORT.—The Commission shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce setting forth the findings and conclusions of the Commission for the study and each update under this paragraph and making recommendations for an increase or decrease, if necessary, in the amounts credited to the account under this section.

''(3) STATE INVOLVEMENT.—The Commission may delegate the distribution of funding under this section to States subject to Commission guidelines and approval by the Commission.

''(c) LIMITATIONS.—

''(1) ANNUAL AMOUNT.—Amounts obligated or expended under subsection (c) for any fiscal year may not exceed $500,000,000.

''(2) USE OF FUNDS.—To the extent that amounts in the account are not obligated or expended for financial assistance under this section, they shall be used to support universal service under section 254.

''(3) SUPPORT LIMITED TO FACILITIES-BASED SINGLE PROVIDER PER UNSERVED AREA.—Assistance under this section may be provided only to—

''(A) facilities-based providers of broadband communications service; and

''(B) 1 facility-based provider of broadband communications service in any unserved area.

''(d) APPLICATION WITH SECTIONS 214, 254, AND 410.—

''(1) SECTION 214(e).—Section 214(e) shall not apply to the Broadband for Unserved Areas Account.

''(2) SECTION 254.—Section 254 shall be applied to the Broadband for Unserved Areas Account—

''(A) by disregarding—

''(i) subsections (a) and (e) thereof; and

''(ii) any other provision thereof determined by the Commission to be inappropriate or inapplicable to implementation of this section; and

''(B) by reconciling, to the maximum extent feasible and in accordance with guidelines prescribed by the Commission, the implementation of this section with the provisions of subsections (h) and (l) thereof.

''(3) SECTION 410.—Section 410 shall not apply to the Broadband for Unserved Areas Account.

''(e) DEFINITIONS.—In this section:

''(1) BROADBAND.—

''(A) IN GENERAL.—The term 'broadband' shall be defined by the Commission in accordance with the requirements of this paragraph.

''(B) REVISION OF INITIAL DEFINITION.—Within 30 days after the date of enactment of the Universal Service for the 21st Century Act, the Commission shall revise its definition of broadband to require a data rate—

''(i) greater than the 200 kilobits per second standard established in its Section 706 Report (14 FCC Rec. 2406); and

''(ii) consistent with data rates for broadband communications services generally available to the public on the date of enactment of that Act.

''(C) ANNUAL REVIEW OF DEFINITION.—The Commission shall review its definition of broadband no less frequently than once each year and revise that definition as appropriate.

''(2) BROADBAND COMMUNICATIONS SERVICE DEFINED.—The term 'broadband communications service' means a high-speed communications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.''.

SEC. 6. IMPLEMENTATION OF SECTION 254A.

The Federal Communications Commission shall complete a proceeding and issue a final rule to implement section 254A of the Communications Act of 1934 not more than 6 months after the date of enactment of this Act.

Mr. DORGAN. Mr. President, today my colleagues Senators SMITH, PRYOR and I are introducing legislation to ensure the sustainability and longevity of the Universal Service Fund and to support the deployment of broadband to unserved areas.

Section 254 of the 1996 Telecommunications Act sets forth the principles of universal service. Section 254 states that all citizens, including rural consumers, deserve access to telecommunications services that are reasonably comparable to those services provided in urban areas, at reasonably comparable rates.

This goal to ensure that rural consumers are not left behind continues to be critical, particularly as technology advances in leaps and bounds in this 21st century. Access to a robust communications infrastructure is a necessity for all Americans.

Our bill will further that goal in two ways. First, it will ensure that the Federal Communications Commission, FCC, will address reform of universal service and intercarrier compensation to support the cost of a national, quality communications network.

Over time, the Universal Service Fund has become increasingly strained, with the burden of support placed on only a limited class of carriers, creating inequities in the system and incentives to avoid contribution.

Reform is needed, and our bill directs the FCC to embark upon this reform, with specific guidelines to ensure equity and fairness and continuing sufficient support for networks.

In addition, our legislation will set up an account within the Universal Service Fund for broadband deployment to unserved areas. This will enable deployment of broadband to areas of the country that remain prohibitively expensive to serve, leaving consumers in those areas behind the technological curve.

This legislation is only a starting point. I believe more dialogue is necessary among my colleagues and industry, in order to achieve comprehensive universal service reform. I invite my colleagues to join me in this dialogue and in cosponsoring this bill.

Mr. President, I ask unanimous consent that a summary of this bill be printed in the RECORD following my statement.

By Mr. BINGAMAN (for himself and Mr. INOUYE):

S. 1585. A bill to amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of medicaid managed care organizations by extending the discounts offered under fee-for-service medicaid to such organizations; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing legislation today with Senator INOUYE entitled the Medicaid Health Plan Rebate Act of 2005.

I ask unanimous consent that a summary of the legislation developed by the Association for Community Affiliated Plans, a policy statement by the American Public Human Services Association on the issue, and a letter of support from the Medicaid Health Plans of America be printed in the RECORD.

I further ask for unanimous consent that the text of the legislation be printed in the RECORD.

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

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS—REDUCING MEDICAID COSTS WITHOUT CUTTING BENEFITS OR BENEFICIARIES: CONGRESS SHOULD EQUALIZE DESCRIPTION DRUG COSTS FOR BENEFICIARIES IN MEDICAID MANAGED CARE

REQUEST

As Congress and the States struggle to control the skyrocketing costs of Medicaid, the Association for Community Affiliated Plans (ACAP) supports a solution that will save Federal, State governments and Medicaid Managed Care Organizations (MCOs) up to $2 billion over ten years by equalizing the treatment of prescription drug discounts between Medicaid managed care and Medicaid fee- for-service. In offering Medicaid managed care plans access to the Medicaid drug rebate, Congress will provide relief for federal and state budgets, thereby mitigating the need for added cuts to Medicaid benefits or populations.

BACKGROUND

Created by the Omnibus Budget Reconciliation Act (OBRA) of 1990, the Medicaid Drug Rebate Program requires a drug manufacturer to have a rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. At the time the law was enacted, managed care organizations were excluded from access to the drug rebate program. In 1990, only 2.8 million people were enrolled in Medicaid managed care and so the savings lost by the carve-out were relatively small. Today, 12 million people are enrolled in capitated managed care plans. This migration of beneficiaries into managed care has, in turn, increased States' Medicaid pharmacy costs because fewer beneficiaries have access to the drug rebate.

CHALLENGE FOR MEDICAID PLANS

Under the drug rebate, States receive between 18 and 20 percent discount on brand

name drug prices and between 10 and 11 percent for generic drug prices. At the time the rebate was enacted, many of the plans in Medicaid were large commercial plans who believed that they could get better discounts than the federal rebate. Today, Medicaid-focused plans are the fastest growing sector in Medicaid managed care. According to a study by the Lewin Group, Medicaid-focused MCOs typically only receive about a 6 percent discount on brand name drugs and no discount on generics. Because many MCOs (particularly smaller Medicaid-focused MCOs) do not have the capacity to negotiate deeper discounts with drug companies, Medicaid is overpaying for prescription drugs for enrollees in Medicaid health plans.

OPPORTUNITY OR MEDICAID SAVINGS

The Lewin Group estimates that this proposal could save up to $2 billion over 10 years. This legislation has been endorsed by organizations representing both state government and the managed care industry, including the National Association of State Medicaid Directors, and the Association for Community Affiliated Plans.

As Congress is forced to make tough choices to control the costs of the Medicaid program, this proposal offers a ''no-harm'' option to control costs and ensure that there is not a prima facie pharmacy cost disadvantage states using managed care as a cost effective alternative to Medicaid fee-for-service.

AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION

NATIONAL ASSOCIATION OF STATE MEDICAID DIRECTORS

POLICY STATEMENT: MCO ACCESS TO THE MEDICAID PHARMACY REBATE PROGRAM

Background

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) established a Medicaid drug rebate program that requires pharmaceutical manufacturers to provide a rebate to participating state Medicaid agencies. In return, states must cover all prescription drugs manufactured by a company that participates in the rebate program. At the time of this legislation, only a small percentage of Medicaid beneficiaries were enrolled in capitated managed care plans and were primarily served by plans that also had commercial lines of business. These plans requested to be excluded from the drug rebate program as it was assumed that they would be able to secure a better rebate on their own. Though regulations have not yet been promulgated, federal interpretation to date has excluded Medicaid managed care organizations from participating in the federal rebate program.

Today, the situation is quite different. 58% of all Medicaid beneficiaries are enrolled in some type of managed care delivery system, many in capitated health plans. Some managed care plans, especially Medicaid-dominated plans that make up a growing percentage of the Medicaid marketplace, are looking at the feasibility of gaining access to the Medicaid pharmacy rebate. However, a number of commercial plans remain content to negotiate their own pharmacy rates and are not interested in pursuing the Medicaid rebate.

Policy Statement

The National Association of State Medicaid Directors is supportive of Medicaid managed care organizations (MCOs), in their capacity as an agent of the state, being able to participate fully in the federal Medicaid rebate program. To do so, the MCO must adhere to all of the federal rebate rules set forth in OBRA '90 and follow essentially the same ingredient cost payment methodology used by the state. The state will have the ability to make a downward adjustment in the MCO's capitation rate based on the assumption that the MCO will collect the full rebate instead of the state. Finally, if a pharmacy benefit manager (PBM) is under contract with an MCO to administer the Medicaid pharmacy benefit for them, then the same principal shall apply, but in no way should both the MCO and the PBM be allowed to claim the rebate.

MEDICAID HEALTH PLANS OF AMERICA,
Washington, DC, April 7, 2005.

MARGARET A. MURRAY,
Executive Director, Association for Community Affiliated Plans, Washington, DC.

DEAR MS. MURRAY: The Medicaid Health Plans of America (MHPOA) supports your proposed initiative to provide Medicaid managed care organizations with access to the Medicaid drug rebate found in Section 1927 of the Social Security Act. We support this effort and urge Congress to enact this common sense provision.

Medicaid Health Plans of America, formed in 1993 and incorporated in 1995, is a trade association representing health plans and other entities participating in Medicaid managed care throughout the country It's primary focus is to provide research, advocacy, analysis, and organized forums that support the development of effective policy solutions to promote and enhance the delivery of quality healthcare. The Association initially coalesced around the issue of national healthcare reform, and as the policy debate changed from national healthcare reform to national managed care reform, the areas of focus shifted to the changes in Medicaid managed care.

Your proposal to allow Medicaid managed care organizations access to the Medicaid drug rebate makes sense given the migration of Medicaid beneficiaries from fee-for-service to managed care since 1990. Increasingly, states have not been able to take advantage of the drug rebate for those enrollees in managed care, thus driving up federal and state Medicaid costs. The savings estimated in the Lewin Group study are significant and may help to mitigate the needs for other cuts in the program. In addition, it demonstrates a proactive effort to offer solutions to improving the Medicaid program. We applaud this effort.

MHPOA is proud to support this legislative proposal and will endorse any legislation in Congress to enact this proposal.

Sincerely,

THOMAS JOHNSON,
Executive Director.

S. 1585

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 ''Medicaid Health Plan Rebate Act of 2005''.

SEC. 2. EXTENSION OF PRESCRIPTION DRUG DISCOUNTS TO ENROLLEES OF MEDICAID MANAGED CARE ORGANIZATIONS.

(a) IN GENERAL.—Section 1927(j) of the Social Security Act (42 U.S.C. 1396r–8(j)) is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and realigning the left margins of such paragraphs accordingly;

(3) in paragraph (1) (as redesignated by paragraph (2) of this section), by striking ''The State'' and inserting ''IN GENERAL.—The State''; and

(4) in paragraph (2) (as so redesignated), by striking ''Nothing'' and inserting ''RULE OF CONSTRUCTION.—Nothing''.

(b) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act and apply to rebate agreements entered into or renewed under section 1927 of the Social Security Act (42 U.S.C. 1396r–8) on or after such date.

Mr. REID. Mr. President, I rise to express my support for the Healthcare Equality and Accountability Act that Senator AKAKA and I are introducing today. We are pleased that Congressman Honda, Chair of the Congressional Asian Pacific American Caucus, is introducing this legislation in the House of Representatives with the support of the Congressional Black Caucus, the Congressional Hispanic Caucus, and the Congressional Native American Caucus.

My first elected position was on the board of trustees of the largest public hospital in Southern Nevada—a hospital known today as University Medical Center (UMC) of Southern Nevada.

Since my time on the hospital board, Nevada has become not just one of the fastest growing states in the nation, but one of the most diverse. The Asian and Hispanic populations have grown by over 200 percent, and the African-American population in Nevada has increased by 91 percent. As a result, health care providers are struggling to meet the needs of Nevada's diverse population.

In one example, a woman arrived at a Las Vegas emergency room hemorrhaging. Doctors determined that she needed a hysterectomy, but she did not speak English. Her young son had to interpret, but was embarrassed to explain the diagnosis, so instead he told his mother she had a tumor in her stomach.

In areas with rapidly growing diverse populations, miscommunications like this one are all too common.

In another incident, a woman at a lab in Las Vegas was diagnosed with breast cancer, but lab employees couldn't find anyone to explain her test results to her in Spanish.

Unfortunately, a shortage of interpreters and translated material is just one problem that contributes to the high rate of health disparities among racial and ethnic groups.

According to a recent report by the Centers for Disease Control, African-Americans are 30 percent more likely to die from heart disease and cancer than whites, and 40 percent more likely to die from stroke.

Yet, despite a substantial need for health care, minority groups are less likely to have health insurance and are less likely to receive appropriate care.

If we do nothing, the health care divide will only get worse. Since 2000, millions more Americans are without health insurance and health care cost have skyrocketed. About 33 percent of Hispanics, 19 percent of African Americans and 19 percent of Asians are uninsured.

In just one year—from 2002 to 2003—the number of Hispanics without health insurance increased by one million people.

And for the first time in four decades, infant mortality rates in this nation have increased. The infant mortality rate for African Americans is more than twice as high than for whites; and is 70 percent higher for American Indian and Alaska Native infants.

The legislation we are introducing today will help to: expand the health care safety net, diversify the health care work force, combat diseases that disproportionately affect racial and ethnic minorities, emphasize prevention and behavioral health, promote the collection and dissemination of data and enhance medical research, and provide interpreters and translation services in the delivery of health care.

Everyone deserves equal treatment in health care. I hope that all of my colleagues will support the Healthcare Equality and Accountability Act so we may begin to close the health care divide.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mrs. MURRAY, Mr. JEFFORDS, Mr. ALEXANDER, Ms. CANTWELL, Mr. AKAKA, Mr. REED, Mr. CHAFEE, Mr. LEAHY, Mr. DODD, and Mr. DAYTON):

S. 1587. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State children's health insurance program for any fiscal year for certain medicaid expenditures; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today with Senators DOMENICI, MURRAY, JEFFORDS, ALEXANDER, CANTWELL, AKAKA, REED, CHAFEE, LEAHY, DODD, and DAYTON we introduce legislation entitled the ''Children's Health Equity Act of 2005.''

This legislation would extend provisions that were included in Public Laws #108–74 and 108–127 that amended the State Children's Health Insurance Program, or SCHIP, to permit the states of Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin to apply some of their enhanced SCHIP matching funds toward the coverage of certain children enrolling in Medicaid that were part of expansions of coverage to children through Medicaid in those 11 states prior to the enactment of SCHIP.

As a article in the September/October 2004 issue of Health Affairs by Genevieve Kenney and Debbie Chang points out, when SCHIP was created, ''Inequities were . . . introduced across states because those that had already expanded Medicaid coverage to children could not receive the higher SCHIP matching rate for these children . . . [and this] meant that states that had been ahead of the curve in expanding Medicaid eligibility for children were penalized financially relative to states that expanded coverage after SCHIP.''

The article adds that ''additional cross-state inequities were introduced'' during the creation of SCHIP because three states had their prior expansions grandfathered in during the bill's consideration. Left behind were the aforementioned 11 states.

Fortunately, with the passage of Public Laws #108–74 and 108–127 in 2003, the inequity was recognized and the 11 states, including New Mexico, were allowed to use up to 20 percent of our State's enhanced SCHIP allotments to pay for Medicaid eligible children above 150 percent of poverty that were part of Medicaid expansions prior to the enactment of SCHIP. As the Congressional Research Service notes, ''The primary purpose of the 20 percent allowance was to enable qualifying states to receive the enhanced FMAP [Federal Medical Assistance Percentage] for certain children who likely would have been covered under SCHIP had the state not expanded their regular Medicaid coverage before SCHIP's enactment in August 1997.''

Unfortunately, one major problem with the compromise was that it only allowed the 11 states flexibility with their SCHIP funds for allotments between 1998 and 2001 and not in the future. Therefore, the inequity continues with SCHIP allotments from 2002 and on. In fact, with the expiration of SCHIP funds from FY 1998–2000 as of September 2004, that leaves the 11 states with only the ability to spend FY 2001 SCHIP allotments on expansion children. For those states, such as Vermont and Rhode Island, that have already spent their 2001 SCHIP allotments, they no longer benefit from the passage of this provision. Furthermore, the FY 2001 funds will also expire at the end of September 2005. Thus, under current law, no spending under these provisions will be permitted in fiscal year 2006 or thereafter.

Therefore, our legislation today prevents the full expiration of this provision for our 11 states and ensures that the compromise language is extended in the future. It is important to states such as New Mexico that have been severely penalized for having expanded coverage to children through Medicaid prior to the enactment of SCHIP. In fact, due to the SCHIP inequity, New Mexico has been allocated $266 million from SCHIP between fiscal years 1998 and 2002, and yet, has only been able to spend slightly over $26 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its federal SCHIP allocations because the expansion children have been previously ineligible for the enhanced SCHIP matching funds.

As the health policy statement by the National Governors' Association reads, ''The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their states.''

It is important to note the bill does not take money from other states' CHIP allotments. It simply allows our states to spend our States' specific CHIP allotments from the federal government on our uninsured children—just as other states across the country are doing.

According to an analysis by the Congressional Research Service, thus far eight states have benefited financially from the passage of the legislation. In the fourth quarter of 2003 and for all four quarters in 2004, Hawaii reported federal SCHIP expenditures using the 20 percent allowance in the amount of $380,000, Maryland received $106,000, New Hampshire received $2.1 million, New Mexico received $2.3 million, Rhode Island received $485,000, Tennessee received $4.5 million, Vermont received $475,000, and Washington received $22.2 million.

I urge that this very important provision for our states be included in the budget reconciliation package the Congress is preparing to consider in September and 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. 1587

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 ''Children's Health Equity Technical Amendment Act of 2005''.

SEC. 2. AUTHORITY FOR QUALIFYING STATES TO USE PORTION OF SCHIP ALLOTMENT FOR ANY FISCAL YEAR FOR CERTAIN MEDICAID EXPENDITURES.

(a) IN GENERAL.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) is amended by striking ''fiscal year 1998, 1999, 2000, or 2001'' and inserting ''a fiscal year''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on October 1, 2004.

By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, Mr. FEINGOLD, Mr. CORZINE, Mr. KOHL, Ms. MIKULSKI, Mr. DURBIN, and Mr. HARKIN):

S. 1589. A bill to amend title XVIII of the Social Security Act to provide for reductions in the medicare part B premium through elimination of certain overpayments to Medicare Advantage organizations; to the Committee on Finance.

S. 1589

Mr. BINGAMAN. Mr. President, I am introducing legislation today with Senators ROCKEFELLER and FEINGOLD that is similar to S. 2906 in the 108th Congress and will have more to say about this legislation when we return in September.

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. 1589

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 ''Affordability in Medicare Premiums Act of 2005''.

SEC. 2. REDUCTION OF MEDICARE PART B PREMIUM FOR INDIVIDUALS NOT ENROLLED IN A MEDICARE ADVANTAGE PLAN.

Section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)) is amended—

(1) in paragraph (3), in the first sentence, by striking ''The Secretary'' and inserting ''Subject to paragraph (5), the Secretary''; and

(2) by adding at the end the following new paragraph:

''(5)(A) For each year (beginning with 2006), the Secretary shall reduce the monthly premium rate determined under paragraph (3) for each month in the year for individuals who are not enrolled in a Medicare Advantage plan (including such individuals subject to an increased premium under subsection (b) or (i)) so that the aggregate amount of such reductions in the year is equal to the aggregate amount of reduced expenditures from the Federal Supplementary Medicare Insurance Trust Fund that the Secretary estimates would result in the year if the annual Medicare+Choice capitation rate for the year was equal to the amount specified under subparagraph (D) of section 1853(c)(1), and not subparagraph (A), (B), or (C) of such section.

''(B) In order to carry out subsections (a)(1) and (b)(1) of section 1840, the Secretary shall transmit to the Commissioner of Social Security and the Railroad Retirement Board by the beginning of each year (beginning with 2006), such information determined appropriate by the Secretary, in consultation with the Commissioner of Social Security and the Railroad Retirement Board, regarding the amount of the monthly premium rate determined under paragraph (3) for individuals after the application of subparagraph (A).''.

SEC. 3. FUNDING REDUCTIONS IN THE MEDICARE PART B PREMIUM THROUGH REDUCTIONS IN PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS.

Section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)), as amended by section 2, is amended—

(1) in paragraph (3), in the first sentence, by striking ''paragraph (5)'' and inserting ''paragraphs (5) and (6)''; and

(2) by adding at the end the following new paragraph:

''(6) For each year (beginning with 2006), the Secretary shall reduce the monthly premium rate determined under paragraph (3) for each month in the year for each individual enrolled under this part (including such an individual subject to an increased premium under subsection (b) or (i)) so that the aggregate amount of such reductions in the year is equal to an amount equal to—

''(A) the aggregate amount of reduced expenditures from the Federal Supplementary Medicare Insurance Trust Fund in the year that the Secretary estimates will result from the provisions of, and the amendments made by, sections 4 and 5 of the Affordability in Medicare Premiums Act of 2005; minus

''(B) the aggregate amount of reductions in the monthly premium rate in the year pursuant to paragraph (5)(A).''.

SEC. 4. APPLICATION OF RISK ADJUSTMENT REFLECTING CHARACTERISTICS FOR THE ENTIRE MEDICARE POPULATION IN PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS.

Effective January 1, 2006, in applying risk adjustment factors to payments to organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23), the Secretary of Health and Human Services shall ensure that payments to such organizations are adjusted based on such factors to ensure that the health status of the enrollee is reflected in such adjusted payments, including adjusting for the difference between the health status of the enrollee and individuals enrolled under the original medicare fee-for-service program under parts A and B of title XVIII of such Act. Payments to such organizations must, in aggregate, reflect such differences.

SEC. 5. ELIMINATION OF MA REGIONAL PLAN STABILIZATION FUND (SLUSH FUND).

(a) IN GENERAL.—Subsection (e) of section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is repealed.

(b) CONFORMING AMENDMENT.—Section 1858(f)(1) of the Social Security Act (42 U.S.C. 1395w–27a(f)(1)) is amended by striking ''subject to subsection (e),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2181).

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Internal Revenue Service within 18 months; to the Committee on Finance.

Mr. BAUCUS. Mr. President, last year, the Senate passed significant legislation aimed at shutting down tax shelters. We ramped up disclosure requirements that make it easier for IRS to find those who promoted and invested in these deals. We greatly increased penalties. We made law firms and accounting firms responsible for their part in perpetuating this distasteful business.

Another thing we did was to take a break on interest expense away from participants in listed transactions and those who fail to disclose a reportable transaction.

Usually, if the IRS audits your tax return and doesn't tell you about any adjustments to your tax bill within 18 months after the return is filed, the interest on that tax bill stops. It stops until the IRS does tell you what you owe. It is called ''the 18 month interest suspension rule'' and became law so taxpayers wouldn't have to pay excessive interest if the IRS took a long time to figure out what they owed.

But, people who get involved with tax shelters play hide and seek with the IRS. They hope the game lasts until the time for auditing a tax return has passed. This means that the IRS often doesn't know a taxpayer has bought into a tax shelter until well after 18 months has gone by.

And, this problem is made even worse by those who sell the shelters. Promoters are supposed to keep a list of those who buy their shelters. The IRS can ask for the list—it's one way the IRS can find those who get into these bad deals.

But, often the promoter won't turn that list over to the IRS right away. Once again, it is well after that 18 month mark before the IRS learns about the investment and can do the audit.

It is not right that taxpayers benefit from this 18 month interest suspension rule when the delays are the result of their own hand. Taxpayers involved in deals that abuse our tax system should not benefit from their own fun and games.

That is why we took the interest suspension break away from these taxpayers in last year's Jobs Act. But we only took it away for interest charges after October 3, 2004.

Today, my good friend CHUCK GRASSLEY and I introduce a proposal that takes this one step further and eliminates the interest suspension break for interest charges on or before October 3, 2004. Why should these folks get any break when they have manipulated the system in the first place?

The only exception is for taxpayers who have decided to take the IRS up on a published settlement initiative to unwind their transaction. Those taxpayers would continue to qualify for suspension of their accrued interest expense through the October 3 date. The IRS has found these settlement initiatives are a useful way to get these old cases resolved and off the table. I think we should help this process along so the IRS can deal with other aspects of the tax gap.

Our proposal also will plug up another unintended loophole in the interest suspension rules. Earlier this year, the IRS ruled that taxpayers filing amended returns showing a balance due more than 18 months after the original return was filed were also entitled to interest suspension—this applies to all taxpayers, not just those with tax shelters. Since the IRS wouldn't have any way of knowing these taxpayers even owed more tax, it doesn't make sense to give them a break on interest charges.

Over the past several years this country has experienced a scourge of tax shelters. With hard work, we have come a long way in our fight against them. We must be relentless in our quest to wipe them out. We need to remove any incentives that might encourage people to get into these abusive deals. Our proposal is one more blow in our fight to maintain fairness and integrity in our system of tax administration. We request your support for this bill.

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. 1591

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

SECTION 1. MODIFICATIONS OF SUSPENSION OF INTEREST AND PENALTIES WHERE INTERNAL REVENUE SERVICE FAILS TO CONTACT TAXPAYER.

(a) EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

''(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

''(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

''(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

''(i) IN GENERAL.—Except as provided in clause (ii) or (iii), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

''(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, pursuant to a published settlement initiative which is offered by the Secretary of the Treasury to a group of similarly situated taxpayers claiming benefits from the transaction, the taxpayer has entered into a settlement agreement with respect to the tax liability arising in connection with the transaction.

''(iii) CLOSED TRANSACTIONS.—Clause (i) shall not apply to a transaction if, as of July 29, 2005 (May 9, 2005 in the case of a listed transaction)—

''(I) the assessment of all Federal income taxes for the taxable year in which the tax liability to which the interest relates arose is prevented by the operation of any law or rule of law, or

''(II) a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

(b) TREATMENT OF AMENDED RETURNS AND OTHER SIMILAR NOTICES OF ADDITIONAL TAX OWED.—

(1) IN GENERAL.—Section 6404(g)(1) of the Internal Revenue Code of 1986 (relating to suspension) is amended by adding at the end the following new sentence: ''If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.''

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to documents provided on or after July 29, 2005.

By Ms. SNOWE (for herself, Mr. CONRAD, Mrs. LINCOLN, and Ms. COLLINS):

S. 1592. A bill to amend title XIX of the Social Security Act to permit States to obtain reimbursement under the Medicaid program for care or services required under the Emergency Medical Treatment and Active Labor Act that are provided in a nonpublicly owned or operated institution for mental diseases; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicaid Emergency Psychiatric Care Act of 2005, which will serve to improve access to mental health treatment and remove an unfunded mandate on our private mental health treatment centers. I am particularly pleased to introduce this bill with several of my colleagues, Senators CONRAD, LINCOLN, and COLLINS, who share my belief that we must improve access to treatment for many of the 18.5 million Americans who are afflicted with a mental health disorder.

Our bill will move a step closer to achieving this goal by requiring the Medicaid program to provide reimbursement to private mental health facilities that receive patients under the Emergency Medical Treatment and Labor Act, known as EMTALA. EMTALA requires hospitals to provide emergency care to patients, regardless of their ability to pay. However, this stands in conflict with Medicaid law, which in most cases prohibits payment for psychiatric treatment for people between the ages of 21 to 65 years. Our legislation will remedy that situation by providing Medicaid coverage for emergency treatment for mental illness, thus expanding access for acute psychiatric care and ensuring that patients with mental disorders receive the assistance they vitally need in a timely fashion.

Under current law, Medicaid payment for psychiatric treatment for patients between the ages of 21 and 65 years is restricted to hospitals that have an in house psychiatric ward. If a patient seeks care from a private psychiatric hospital or is transferred to a private facility from a community hospital, Medicaid does not provide reimbursement due to the so-called Institutions for Mental Disease, IMD, exclusion. In comparison, if the same patient seeks care under EMTALA from a hospital because of a physical ailment, Medicaid provides coverage regardless of the type of facility that provides the treatment. I have therefore joined together with Senator CONRAD, Senator LINCOLN, and Senator COLLINS to introduce legislation that will require Medicaid to pay for the cost of care associated with emergency psychiatric treatment necessary to comply with EMTALA. No longer will private entities be required to shoulder the burden of this Federal mandate, and no longer will Medicaid-eligible beneficiaries go without access to necessary and appropriate emergency care.

This bipartisan legislation has been carefully crafted with input from both the provider and beneficiary communities to ensure that assistance is directed to those who are most in need and to ensure that the coverage only extends to people who require emergency treatment. The definition in the EMTALA statute of an emergency is straightforward for psychiatric patients. Patients must present as a danger to themselves or others—for example, as being suicidal or threatening physical harm to others.

Our bill also offers a targeted and low-cost solution to ease the crisis in emergency departments. Emergency department overcrowding is a growing and severe problem in the United States, and dedicated physicians and nurses who work in emergency rooms are reaching a breaking point where they may not have the resources or surge capacity to respond effectively. Patients often face a long wait in the emergency room, sometimes for days, because there is no bed or other appropriate setting available. Tens of thousands of dollars every day are being spent inefficiently on extended treatment in emergency rooms that is not the most appropriate or clinically effective care.

This crisis in emergency departments impacts everyone's access to lifesaving care. According to a May 2005 report by the Centers for Disease Control and Prevention, the number of annual emergency department visits increased 26 percent over a 10-year period, from 90.3 million in 1993 to 113.9 million visits in 2003—an average increase of more than 2 million visits per year. During the same time, the number of hospital emergency departments decreased by more than 12 percent, resulting in a greater number of visits to emergency departments that remain open.

How do these problems affect emergency care for all of us? Overcrowded emergency rooms result in reduced availability of physicians, nurses, and healthcare staff; fewer available examination areas and beds; longer waits for patients and their families; and hospitals more frequently having to divert patients by ambulance to other hospitals.

The existing situation is not only jeopardizing access to emergency rooms and treatment but ultimately, in many cases, it is overwhelming the criminal justice system. The U.S. Department of Justice estimates that, on average, 16 percent of inmates in local jails suffer from a mental illness, and in Maine, the National Alliance for the Mentally Ill, NAMI, an advocacy group for persons with mental illness, estimates that figure is as high as 50 percent. In my home state of Maine, 65,000 people have a severe mental illness but with the severe shortage of psychiatric beds in the State, many people go without treatment. We must take action to provide the mentally ill with better access to care, and we must start by ensuring that Medicaid reimburses the facilities that provide treatment.

Passing the Medicaid Emergency Psychiatric Care Act and providing Medicaid coverage for emergency psychiatric treatment in both general and psychiatric hospitals will accomplish several goals. First, and most importantly, it will result in better psychiatric emergency care for patients. Second, it will result in more efficient and effective use of both Federal and State Medicaid dollars. Third, by resolving the current conflict in Federal law between EMTALA requirements and the Medicaid IMD exclusion from reimbursement, the bill will enable

freestanding psychiatric hospitals to receive reimbursement for Medicaid psychiatric patients on the same basis as general hospitals and help preserve the viability of these hospitals.

We have received strong support from a number of leading national mental health and medical associations who confirm the critical need for this legislation, including NAMI, the National Association of County Behavioral Health Directors, the American Psychiatric Association, the American College of Emergency Physicians, the American Hospital Association, and the National Association of Psychiatric Health Systems. I am especially pleased to have also received endorsements from a number of Maine organizations, including the Maine Hospital Association, Spring Harbor Hospital, and NAMI Maine.

This legislative change is vitally important to ensure that Medicaid patients with mental illness receive the right care at the right time in the right setting, instead of prolonged stays in emergency rooms and in hospital settings without psychiatric specialty care. The cost of achieving a more efficient, effective, and clinically appropriate care system for psychiatric emergencies is small and well worth it. I urge my colleagues to join us in cosponsoring the bill.

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

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

NATIONAL ALLIANCE
FOR THE MENTALLY ILL,
Arlington, VA, July 11, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 210,000 members and 1,200 affiliates of the National Alliance for the Mentally Ill (NAMI), I am writing to express support for your legislation, the Medicaid Emergency Psychiatric Care Act of 2005. NAMI strongly supports this important effort to address the growing crisis in access to acute care services for non-elderly adults living with severe mental illness. As the nation's largest organization representing individuals with severe mental illness and their families, NAMI is pleased to support this important measure.

As NAMI's consumer and family membership knows first-hand, the acute care crisis for inpatient psychiatric care is growing in this country. This disturbing trend was identified in the recently released Bush Administration New Freedom Initiative Mental Health Commission report. Over the past 15–20 years, states have closed inpatient units and drastically reduced the number of acute care beds. Also, general hospitals, due to severe budget constraints, have had to close psychiatric units or reduce the number of beds. This has resulted in a growing shortage of acute inpatient psychiatric beds in many communities.

The Medicaid Emergency Psychiatric Care Act will address an important conflict in federal policy that has contributed to restricted access to needed inpatient services—the Medicaid Institution for Mental Diseases (IMD) Exclusion and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients in an emergency medical condition, while the IMD exclusion prevents certain hospitals (psychiatric hospitals) from receiving Medicaid reimbursement for Medicaid beneficiaries between the ages of 21–64 in these circumstances.

This important measure will allow Medicaid funding to be directed to non-publicly owned and operated psychiatric hospitals (IMDs) for Medicaid beneficiaries between the ages of 21–64 who require stabilization in these settings as required by EMTALA. Today, these hospitals are denied payment for care required under the EMTALA rules. The result is that psychiatric hospitals are forced to absorb these added costs of care to their already growing un-reimbursed care even though these patients have insurance through Medicaid.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA law. Your leadership in carefully crafting and introducing this targeted legislation addressing a critical problem for persons with serious mental illnesses is much appreciated. NAMI looks forward to working with you and your Senate colleagues to ensure passage of this important legislation.

Sincerely,
MICHAEL J. FITZPATRICK, M.S.W.,
Executive Director.

JULY 26, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: The National Association of County Behavioral Health and Developmental Disability Directors (NACBHD), which is the behavioral health affiliate of the National Association of Counties, and the National Association of Counties (NACo) are writing to strongly support The Medicaid Emergency Psychiatric Care Act—legislation you are introducing to alleviate the crisis in access to acute hospital inpatient psychiatric services. A lack of acute inpatient services was recently highlighted in President Bush's New Freedom Commission on Mental Health report and is a problem in many counties. In twenty of the most populous states, counties have the designated responsibility to plan and implement mental health services.

Over the past 20 years most states have closed many of their state hospitals and returned individuals to the community for care. General hospitals have over the past 10–15 years have also begun to close psychiatric inpatient units. Freestanding psychiatric hospitals have been significantly reduced due to the reimbursements rates brought about with the advent of managed care. Overall, the availability of acute psychiatric beds, in many states, has decreased dramatically in the last 10 years. Given the shortage of inpatient acute beds, many individuals with serious psychiatric disorders end up in county jails or homeless rather than receiving basic psychiatric services in hospital.

Your legislation specifically addresses the conflict in federal law between the Emergency Medical Treatment and Labor Act (EMTALA) Medicaid Institution for Mental Disease (IMD). Your legislation will enable psychiatric hospitals to receive reimbursement on the same basis as general hospitals for Medicaid patients who meet EMTALA standards of a medical crisis. The legislation offers a low-cost solution to alleviate the crisis in emergency rooms in general hospitals caused by an overflow of individuals in need of psychiatric care because inpatient beds are not available.

NACBHD and NACo appreciate your leadership in introducing this specific legislation that will address this inherent conflict in federal requirements and will assist in promoting access to acute psychiatric inpatient services. We look forward to working with you and your colleagues in getting this legislation passed through this Congress.

Sincerely,
LARRY E. NAAKE,
Executive Director, National Association of Counties.
MELISSA STAATS,
President & CEO, National Association of County Behavioral Health and Developmental Disability Directors.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, July 20, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the American Hospital Association's (AHA) members—4,800 hospitals, health systems and other health care organizations, and 33,000 individuals—I am writing to express our support for your bill, the Medicaid Emergency Psychiatric Care Act of 2005.

As you know, the Emergency Medical and Labor Treatment Act (EMTALA) require all hospitals, including psychiatric hospitals, to stabilize patients who come in with an emergency medical condition. But Medicaid's Institution for Mental Diseases (IMD) exclusion does not allow Medicaid reimbursement to non-public psychiatric hospitals for stabilizing care delivered to Medicaid patients between the ages of 21–64. This exclusion burdens these facilities with an unfunded mandate in fulfilling their EMTALA obligations for this patient population.

Your legislation would eliminate the IMD exclusion and allow non-public psychiatric hospitals to receive appropriate reimbursement for care provided under EMTALA to Medicaid beneficiaries between the ages of 21–64. This will relieve overcrowding in emergency departments and provide the appropriate care these patients deserve in a more timely manner.

Thank you for addressing this important issue. We support the Medicaid Emergency Psychiatric Care Act of 2005 and look forward to working with you and your colleagues to ensure swift passage of this legislation. If you have further questions, please contact the AHA's Curtis Rooney at (202) 626–2678, or crooney@aha.org.

Sincerely,
RICK POLLACK,
Executive Vice President.

AMERICAN PSYCHIATRIC
ASSOCIATION,
Arlington, VA, July 19, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 36,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my gratitude for your Senate sponsorship of the Medicaid Emergency Psychiatric Care Act.

The Emergency Medical and Labor Treatment Act, which requires hospitals to stabilize patients in an emergency medical condition, directly conflicts with the Medicaid Institution for Mental Diseases (IMD) exclusion. The IMD exclusion prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients

between the ages of 21–64 that have required stabilization as a result of EMTALA regulations.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA.

Thank you for your foresight and leadership in your lead sponsorship of the Medicaid Emergency Psychiatric Care Act. Thanks are also due to the outstanding work by Sue Walden, who ably represents you. The APA looks forward to continue working with you to progress this important legislation for Medicaid psychiatric patients and providers.

Sincerely,

STEVEN S. SHARFSTEIN, M.D.,
President, American Psychiatric Association.

AMERICAN COLLEGE OF EMERGENCY PHYSICIANS,
Washington, DC, July 11, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 23,000 members and 53 chapters of the American College of Emergency Physicians (ACEP), I am writing to express support for your legislation, the Medicaid Emergency Psychiatric Care Act of 2005. ACEP strongly support this important effort to address the growing crisis in access to acute care services for non-elderly adults living with severe mental illness. As the nation's largest emergency medicine organization, we believe your legislation will provide needed attention and support to an area inadequately addressed to date.

The Medicaid Emergency Psychiatric Care Act will address an important conflict in federal policy that has contributed to restricted access to needed inpatient services—the Medicaid Institution for Mental Diseases (IMD) Exclusion and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients in an emergency medical condition, while the IMD exclusion prevents certain hospitals (psychiatric hospitals) from receiving Medicaid reimbursement for Medicaid beneficiaries between the ages of 21–64 in these circumstances. Your bill will allow Medicaid funding to be directed to non-publicly owned and operated psychiatric hospitals (IMDs) for Medicaid beneficiaries between those ages who require stabilization in these settings as required by EMTALA.

We commend you and the many colleagues we hope will support this important measure and we stand prepared to do what we can to ensure its enactment.

Sincerely yours,

ROBERT E. SUTER, DO, MHA, FACEP,
President.

NATIONAL ASSOCIATION OF PSYCHIATRIC HEALTH SYSTEMS,
Washington, DC, July 19, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the members of the National Association of Psychiatric Health Systems (NAPHS) and the individuals and families that our members serve, we strongly endorse the Medicaid Emergency Psychiatric Care Act of 2005. This legislation, if approved by Congress, would result in patients receiving appropriate care for psychiatric emergencies instead of prolonged stays in emergency rooms.

We want to recognize your leadership in developing this legislation, which provides a targeted and cost-effective solution to the problem of overcrowding in emergency rooms for all, but particularly for those with mental illness. The measure has won bipartisan support from members of Congress as well as the support of key national organizations for its thoughtful approach.

Every day patients with serious mental illness are being ''boarded'' in hospital emergency departments or transferred to other hospitals by ambulance because of a lack of appropriate care.

This bill will enable psychiatric hospitals to receive reimbursement on the same basis as general hospitals for Medicaid patients who are in a crisis and present a danger to themselves or others. This will help general hospitals to address part of their overflow issues and ensure that patients receive appropriate treatment. It will resolve a current conflict in federal law between the Emergency Medical Treatment and Labor Act (EMTALA) and the Medicaid Institution for Mental Disease (IMD) exclusion.

Passage of the Medicaid Emergency Psychiatric Care Act is an investment that will pay off in more appropriate care for patients and more effective use of Medicaid dollars.

Sincerely,

MARK COVALL,
Executive Director.

MAINE HOSPITAL ASSOCIATION,
Augusta, ME, July 29, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the Maine Hospital Association's 39 acute-care and specialty hospitals, I am writing in support of your bill, the Medicaid Emergency Psychiatric Care Act of 2005.

As you know, the Medicaid program, through the Institution for Mental Diseases (IMD) exclusion, prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients between the ages of 21–64 who require stabilization. When the Federal Government created Medicaid they prohibited Medicaid funding for services at IMDs because Washington viewed mental health services to be the responsibility of the State—particularly since at that time most psychiatric hospitals were State-owned hospitals. The Federal Government did provide funding through the DSH–IMD (Disproportionate Share Hospital Fund for Institutes for Mental Disease). Initially these funds were used solely by the private IMDs, however, in 1991, Maine, in response to a severe budget shortfall, began to shift costs associated with Augusta Mental Health Institute (AMHI) and Bangor Mental Health Institute (BMHI) into the Federal DSH–IMD pool rather than funding those costs with all general fund dollars.

In the mid-1990s the State passed a rule that entitled AMHI and BMHI to be paid first out of the DSH–IMD pool leaving the remainder for the two private hospitals. With a declining Federal cap on the DSH–IMD pool and increasing hospital expenses, there was less and less money with which to reimburse the two private psychiatric hospitals for services provided to this indigent population.

Maine has two private psychiatric hospitals: Spring Harbor Hospital in South Portland and The Acadia Hospital in Bangor. For fiscal year 2005, Acadia had inpatient admissions of 1,731 and Spring Harbor had 3,208. Adults between the ages of 21 and 64 represented nearly 75 percent of all Spring Harbor admissions in fiscal year 2005, up from 69% in 2004. In addition, Spring Harbor estimates that in fiscal year 2006, patients between the ages of 21 and 64 who cannot afford to pay for their care at Spring Harbor will receive close to $6 million in free hospital services. Both hospitals also provide a significant amount of outpatient services.

The two private hospitals play a pivotal role in the delivery of mental health services especially for low-income individuals. As the State has desired to encourage greater behavior services within communities, the Department of Behavioral and Developmental Services worked with both of these hospitals to increase the number of beds and services available to allow for certain patients to be placed in these hospitals rather than the State institutes. The inability of these two hospitals to effectively meet these patient needs would have a detrimental impact throughout the State especially because communities are already stressed attempting to develop needed community-based services.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA. This will relieve overcrowding in emergency departments and provide the appropriate care these patients deserve in a more timely manner.

Thank you for addressing this important issue. We support the Medicaid Emergency Psychiatric Care Act of 2005 and look forward to working with you and your colleagues to ensure swift passage of this legislation.

Sincerely,

STEVEN R. MICHAUD,
President.

SPRING HARBOR HOSPITAL,
Westbrook, ME, July 26, 2005.

Hon. OLYMPIA J. SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: Writing as CEO on behalf of Spring Harbor Hospital in Maine, and a past President of the National Association of Psychiatric Health Systems, I would like to thank you for supporting legislation to enable freestanding private psychiatric hospitals in the US to receive payment for the emergency stabilization services they provide each year to thousands of Medicaid-eligible adult clients under the Emergency Medical Treatment And Labor Act (EMTALA).

As you know, it is becoming increasingly difficult for freestanding private psychiatric facilities to absorb the cost of treating Medicaid-eligible adults between the ages of 21 and 64 who are referred to them for emergency stabilization under EMTALA. At Spring Harbor alone, the cost of serving this population last year was close to $6 million.

Faced with both diminishing reimbursement streams and a concurrent rise in demand for inpatient stabilization services from overflowing emergency rooms across the country, private freestanding psychiatric facilities are quite literally caught between a rock and a hard place. In Maine and in many other places, freestanding private psychiatric hospitals are protecting their financial health by offering fewer and fewer adult psychiatric services in the inpatient setting. This tactic simply skirts the issue and creates a further void of services for individuals with acute mental illness, precisely at a time when it is widely accepted that the availability of mental health services in this country is substandard.

When all is said and done, these financial figures pale in comparison to the ultimate cost to our society when these adults fail to receive the treatment they deserve. It has been estimated that the lifetime cost of providing for an individual with an untreated serious mental illness is $10 million. Though this figure includes the financial impact of

lost work days and the cost of providing Social Security disability benefits, it does not even begin to speak to the emotional toll of mental illness on friends or the scars mental illness can have on loved ones for generations to come. If we could quantify these numbers adequately, I am certain that I would not need to be writing to you today.

In closing, I would like to acknowledge the receptiveness of your office and that of Senator Collins to issues concerning the plight of the one in four adults and one in ten children in the US who will experience a mental illness this year. It is high time that the issues surrounding this illness were addressed with understanding, compassion, and a concern for our country's long-term mental health. I am both pleased and proud that the Maine congressional delegation is leading the way on these critical Issues.

Best regards,

DENNIS P. KING,
Chief Executive Officer, Past President (2003), National Association of Psychiatric Health Systems.

NATIONAL ALLIANCE
FOR THE MENTALLY ILL OF MAINE,
Augusta, ME, July 27, 2005.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 1.400 members and 20 affiliates of the National Alliance for the Mentally Ill of Maine (NAMI Maine), I write to express support for your legislation, the Medicaid Emergency Psychiatric Care Act of 2005. NAMI Maine strongly supports your effort to address the growing crisis in access to acute care services for non-elderly adults living with severe mental illness. NAMI Maine's mission is to improve the quality of life of all people affected by mental illness and in this regard, we see this legislation as an attempt to address an important issue.

We know firsthand in Maine the dire consequences that occur when access to psychiatric care is not available. Like the rest of the country, Maine has dramatically reduced the number of state run psychiatric beds. One of the most appalling results of this has been the significant increase in the numbers of people with mental illness who are living in Maine's jails. A snapshot review of the Cumberland County jail last spring showed that 60 percent of the inmates were taking medication for mental health problems; a spring survey of the Kennebec County jail had the same result. Sadly, most of these people are in jail for non-violent crimes connected to their illness and their inability to obtain services to treat that illness. Maine is one of the states with the highest rates in the nation of incarceration for people with mental illness. Unfortunately, the outcomes for people with mental illness who are jailed instead of treated are abysmal—and the financial costs are also very high. It is not unusual for a person in need of a psychiatric bed in Maine t0 wait several days in the emergency room for a bed to open. Despite these statistics, the recent state budget has significantly reduced funding for mental health services. This will result in a growing shortage of community mental health services—placing additional stress on hospitals, emergency rooms, and people with mental illness and their families. The inadequate number of acute inpatient psychiatric beds will continue to be a significant problem.

Tne Medicaid Emergency Psychiatric Care Act will address an important conflict in federal policy that has contributed to restricted access to needed inpatient services—the Medicaid Institution for Mental Diseases (IMD) Exclusion and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients in an emergency medical condition, while the IMD exclusion prevents certain hospitals (psychiatric hospitals) from receiving Medicaid reimbursement for Medicaid beneficiaries between the ages of 21–64 in these circumstances.

This important measure will allow Medicaid funding to be directed to non-publicly owned and operated psychiatric hospitals (IMDs) for Medicaid beneficiaries between the ages of 21–64 who require stabilization in these settings as required by EMTALA. Today, these hospitals are denied payment for care required under the EMTALA rules. The result is that psychiatric hospitals are forced to absorb these added costs of care to their already growing un-reimbursed care even though these patients have insurance through Medicaid. Sometimes it means that patients are discharged too soon, as a cost savings measure, only to return them to their families in a similar condition to when they were admitted.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA law. Your leadership in carefully crafting and introducing this targeted legislation addressing a critical problem for persons with serious mental illness is much appreciated. NAMI looks forward to working with you and your Senate colleagues to ensure passage of this important legislation.

Sincerely,

CAROL CAROTHERS,
Executive Director.

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

S. 1593. A bill to amend title XVIII of the Social Security Act to enhance the access of Medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits at Federally qualified health centers; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicare Payment Adjustment To Community Health Centers, PATCH, Act of 2005. I am particularly pleased to introduce this bill with my good friend and colleague, Senator BINGAMAN. Two years ago we introduced a more comprehensive version of this legislation, S. 654. I am happy to report that many of the provisions in S. 654 were included in the Medicare Modernization Act of 2003. The bill I am introducing today reflects two key provisions which remain the priorities of our community health centers.

This legislation will improve Medicare beneficiaries' access to primary care services and preventive treatments by increasing access to Community Health Centers. Local, non-profit, commnnity-owned health centers, also known as Federally Qualified Health Center, FCHQs, furnish essential primary and preventive care services to low income and medically underserved communities. In many cases, community health centers are the only source of primary and preventive services to which Medicare beneficiaries have access. This is especially true for people living in America's medically underserved rural areas.

For nearly 40 years, the national network of health centers has provided high-quality, affordable primary care and preventive services. Community health centers are located in areas where care is needed but scarce, and they improve access to care for millions of Americans regardless of their insurance status or ability to pay. Their costs of care rank among the lowest, and they reduce the need for more expensive emergency, in-patient, and specialty care, saving billions for dollars for taxpayers.

Community health centers are increasingly becoming important providers of primary care and preventlve services to seniors—as well as providers of on-site dental, pharmaceu ical, and mental health services. In short, community health centers provide the ease of ''one-stop health care shopping,'' meaning that seniors, instead of moving from location to location to receive comprehensive primary hearh services, can usually receive all of their essential primary care in one place.

The PATCH Act will ensure that community health centers can fully participate in the Medicare program and provide seniors with these vital services. Ensuring that Medicare pays its fair share is important to the stability of community health centers. While 17 percent of health center patients in Maine are Medicare beneficiaries, the Medicare program pays only 78 cents on the dollar for the health center costs incurred in delivering comprehensive primary care services to them. For health centers to remain a viable part of the health care delivery system, we must make changes.

Over the last 15 years, Congress has made many improvements to the Medicare program through the addition of new primary and preventive benefits, including screening mammograms, pap smears, colorectal and prostate cancer screenings, flu and pneumococcal vaccinations, bone mass measurement, and glucose monitoring and nutrition therapy for diabetics. However, Congress has not updated the Medicare law to add these crucial services to the health center reimbursement package, so health centers are denied payment for these services when provided to Medicare beneficiaries. This lack of reimbursement has caused significant losses for health centers every time they deliver these services to Medicare patients. Our bill will add these essential services to the health center package of benefits so that they can receive payment for these services.

The Medicare law has also neglected to include health care for the homeless grantees as Federal qualified health centers. The bill would also restore these centers for recognition within the Medicare statute. Our legislation is strongly supported by the National Association of Community Health Centers, and I ask unanimous consent that their letter of support be printed in the RECORD at the conclusion of my remarks.

The PATCH Act makes these two technical and straightforward changes to the Medicare program to ensure that Community Health Centers can fully participate in Medicare and provide seniors with these vital primary and preventive services. These changes are vitally important in my state of Maine and also to health centers throughout our nation. By making these two straightforward changes, we will be able to enhance the care that all Medicare beneficiaries receive, especially those living in rural and medically underserved communities. I urge my colleagues to cosponsor the bill.

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

NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS, INC.,
Washington, DC, July 29, 2005.

Hon. OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: On behalf of the National Association of Community Health Centers (NACHC), I am writing to express our support for your bill, the Medicare Payment Adjustment to Community Health Centers (PATCH) Act of 2005. We sincerely appreciate your continued commitment to improve the Medicare program for all health centers.

Community health centers are local, nonprofit, community-oriented health care providers serving low income and medically underserved communities. For nearly 40 years, the national network of health centers has provided high-quality, affordable primary care and preventive services, and often provide on-site dental, pharmaceutical, mental health and substance abuse services. America's health centers provide care to nearly one million Medicare beneficiaries; furnishing essential primary and preventive care services in underserved areas of the country. Health centers provide ''one-stop health care,'' allowing seniors to receive all of their essential primary care in one convenient location.

Over the last 15 years, Congress has made many improvements to the Medicare program through the addition of new primary and preventive benefits, including: screening mammograms, pap smears, colorectal & prostate cancer screenings, flu/pneumococcal vaccinations, glucose monitoring and self management training for diabetics, bone mass measurement, and medical nutrition therapy for diabetics. Unfortunately, Congress did not update the Medicare law to add these vital services to the health center reimbursement package, thus denying health centers payment for these services when provided to Medicare beneficiaries. This lack of reimbursement has caused significant losses for health centers every time they deliver these services to Medicare patients, even though it was the clear intent of Congress to cover these services for all beneficiaries.

Health Centers are pleased that your bill remedies this issue by updating the Medicare law to add these essential services to the health center package of benefits. We strongly believe that this will allow health centers to build on their record of providing quality care to seniors.

We also are appreciative that your legislation would correct a long-standing oversight relating to Health Care for the Homeless grantees. Your legislation would ensure that the original intent of Congress was reflected in the law.

Thank you for your leadership in addressing these critical issues and we stand ready to assist you in your efforts to enact this important legislation.

Sincerely,

DANIEL R. HAWKINS, Jr.
Vice President for Federal, State, and Public Affairs.

By Mr. CORZINE:

S. 1594. A bill to require financial services providers to maintain customer information security systems and to notify customers of unauthorized access to personal information, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, identity theft is a serious and growing concern facing our Nation's consumers. According to the Federal Trade Commission, nearly 10 million Americans were the victims of identity theft in 2003, which represents a tripling of the number of victims from just 3 years earlier. Research shows that there are more than 13 identity thefts every minute.

According to the Identity Theft Resource Center, identity theft victims spend on average nearly 600 hours recovering from the crime. Additional research indicates the costs of lost wages and income as a result of the crime can soar as high as $16,000 per incident. No one wants to suffer this kind of hardship.

Technological innovation has delivered tremendous benefits to our economy in the form of increased efficiency, expanded access, and lower costs. And it has spurred the creation of an entire industry of data collectors and brokers who profit from the packaging and commoditization of one's personal and financial information. But, regrettably, this technology has also provided identity thieves with an attractive target, and relative anonymity, with which to ply their sinister trade.

While many sectors of our economy are affected, financial institutions face a particularly difficult challenge. By definition, the information they use to conduct their daily business is sensitive, because it is tied so closely to their customers' finances. A breach of this data has the potential to cause large and damaging losses in a very short amount of time.

Events over the past several months have further served to highlight how serious this risk has become. The announcement not long ago by Citigroup that a box of computer tapes containing information on 3.9 million customers was lost by United Parcel Service in my own state of New Jersey while in transit to a credit reporting agency is the latest in a line of recent, high profile incidents. In fact, I myself was a victim of a similar loss of computer tapes by Bank of America earlier this year.

In both of these cases, Citigroup and Bank of America acted responsibly and notified possible victims in a prompt and timely manner. But this is not always the case. And both of these cases involved accidental loss—not even active attempts to steal personal financial information.

At the very least consumers deserve to be made aware when their personal information has been compromised. Right now, they must hope that the laws of a few individual states, such as California, apply to their case, or that victimized institutions will act responsibly on their own.

In the event that an information breach does occur, the legislation I am introducing today, the ''Financial Privacy Protection Act of 2005,'' would require prompt notification of all victims in all cases, subject, of course, to the concerns of law enforcement agencies. Based on this notification, victims could then take immediate action to include an extended fraud alert in their credit files to minimize the damage done.

But on top of notification, customers need to know that if they trust a bank with their sensitive personal information—which they must do in order to engage in a financial transaction—that that bank will be doing everything in its power to protect their information.

For that purpose, the ''Financial Privacy Protection Act of 2005'' would also direct financial regulators, in concert with the Federal Trade Commission, to establish strong and meaningful standards for the protection of information maintained by financial institutions on behalf of their customers. Because these measures are so important, the chief executive officer or the chief compliance officer of every institution must personally attest as to the effectiveness of these safeguards.

It is imperative that we take action to combat the growing threat of identity theft. This crime harms individuals and families, and drags down our economy in the form of lost productivity and capital. We can do more and we must do more.

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. 1594

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 ''Financial Privacy Protection Act of 2005''.

SEC. 2. PREVENTION OF IDENTITY THEFT; NOTIFICATION OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.

Subtitle B of title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6821 et seq.) is amended—

(1) by striking section 525;

(2) by redesignating sections 522 through 524 as sections 523 through 525, respectively;

(3) in section 525, as redesignated, by striking ''section 522'' and inserting ''section 523''; and

(4) by inserting after section 521 the following:

''SEC. 522. PREVENTION OF IDENTITY THEFT; NOTIFICATION OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.

''(a) CUSTOMER INFORMATION SECURITY SYSTEM REQUIRED.—

''(1) IN GENERAL.—In accordance with regulations issued under paragraph (2), each financial institution shall develop and maintain a customer information security system, including policies, procedures, and controls designed to prevent any breach with respect to the customer information of the financial institution.

''(2) REGULATIONS.—

''(A) IN GENERAL.—Each of the Federal functional regulators shall issue regulations regarding the policies, procedures, and controls required by paragraph (1) applicable to the financial institutions that are subject to their respective enforcement authority under section 523.

''(B) SPECIFIC REQUIREMENTS.—The regulations required by subparagraph (A) shall—

''(i) require the chief compliance officer or chief executive officer of a financial institution to personally attest that the customer information security system of the financial institution is in compliance with Federal and other applicable standards and is subject to an ongoing system of monitoring;

''(ii) require audits by the issuing agency (or submitted to the issuing agency by an independent auditor paid for by the financial institution to audit the financial institution on behalf of the issuing agency) of the customer information security system of a financial institution not less frequently than once every 5 years;

''(iii) require the imposition by the issuing agency of appropriate monetary penalties for failure to comply with applicable customer information security standards; and

''(iv) include such other requirements or restrictions as the issuing agency considers appropriate to carry out this section.

''(C) EFFECTIVE DATE.—Regulations issued under this paragraph shall become effective 6 months after the effective date of the Financial Privacy Protection Act of 2005.

''(b) NOTIFICATION TO CUSTOMERS OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.—

''(1) FINANCIAL INSTITUTION REQUIREMENT.—In any case in which there has been a breach at a financial institution, or such a breach is reasonably believed to have occurred, the financial institution shall promptly notify—

''(A) each customer whose customer information was or is reasonably believed to have been accessed in connection with the breach or suspected breach;

''(B) the appropriate Federal functional regulator or regulators with respect to the financial institutions that are subject to their respective enforcement authority;

''(C) each consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

''(D) appropriate law enforcement agencies, in any case in which the financial institution has reason to believe that the breach or suspected breach affects a large number of customers, including as described in paragraph (5)(A)(iii), subject to regulations of the Federal Trade Commission.

''(2) OTHER ENTITIES.—For purposes of paragraph (1), any person that maintains customer information for or on behalf of a financial institution shall promptly notify the financial institution of any case in which such customer information has been, or is reasonably believed to have been, breached.

''(3) TIMELINESS OF NOTIFICATION.—Notification required by this subsection shall be made—

''(A) promptly and without unreasonable delay, upon discovery of the breach or suspected breach; and

''(B) consistent with—

''(i) the legitimate needs of law enforcement, as provided in paragraph (4); and

''(ii) any measures necessary to determine the scope of the breach or restore the reasonable integrity of the customer information security system of the financial institution.

''(4) DELAYS FOR LAW ENFORCEMENT PURPOSES.—Notification required by this subsection may be delayed if a law enforcement agency determines that the notification would seriously impede a criminal investigation, and in any such case, notification shall be made promptly after the law enforcement agency determines that it would not compromise the investigation.

''(5) FORM OF NOTICE.—Notification required by this subsection may be provided—

''(A) to a customer—

''(i) in writing;

''(ii) in electronic form, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the Electronic Signatures in Global and National Commerce Act;

''(iii) if the number of people affected by the breach exceeds 500,000 or the cost of notification exceeds $500,000, or a higher number or numbers determined by the Federal Trade Commission, such that the cost of providing notifications relating to a single breach or suspected breach would make other forms of notification prohibitive, or in any case in which the financial institution certifies in writing to the Federal Trade Commission that it does not have sufficient customer contact information to comply with other forms of notification with respect to some customers, then for those customers, in the form of—

''(I) a conspicuous posting on the Internet website of the financial institution, if the financial institution maintains such a website; and

''(II) notification through major media in all major cities and regions in which the customers whose customer information is suspected to have been breached reside, that a breach has occurred, or is suspected, that compromises the security, confidentiality, or integrity of customer information of the financial institution; or

''(iv) in such additional forms as the Federal Trade Commission may by rule prescribe; and

''(B) to consumer reporting agencies and law enforcement agencies (where appropriate), in such form as the Federal Trade Commission shall by rule prescribe.

''(6) CONTENT OF NOTIFICATION.—Each notification to a customer under this subsection shall include—

''(A) a statement that—

''(i) credit reporting agencies have been notified of the relevant breach or suspected breach; and

''(ii) notwithstanding any other provision of law, the customer may elect to place a fraud alert in the file of the consumer to make creditors aware of the breach or suspected breach, and to inform creditors that the express authorization of the customer is required for any new issuance or extension of credit (in accordance with section 605A of the Fair Credit Reporting Act); and

''(B) such other information as the Federal Trade Commission determines is appropriate.

''(7) COMPLIANCE.—Notwithstanding paragraph (5), a financial institution shall be deemed to be in compliance with this subsection, if—

''(A) the financial institution has established a comprehensive customer information security system that is consistent with the standards prescribed by the appropriate Federal functional regulator under subsection (a);

''(B) the financial institution notifies affected customers and consumer reporting agencies in accordance with its own internal information security policies in the event of a breach or suspected breach; and

''(C) such internal security policies incorporate notification procedures that are consistent with the requirements of this subsection and the rules of the Federal Trade Commission under this subsection.

''(8) RULES OF CONSTRUCTION.—

''(A) IN GENERAL.—Compliance with this subsection by a financial institution shall not be construed to be a violation of any provision of subtitle A, or any other provision of Federal or State law prohibiting the disclosure of financial information to third parties.

''(B) LIMITATION.—Except as specifically provided in this subsection, nothing in this subsection requires or authorizes a financial institution to disclose information that it is otherwise prohibited from disclosing under subtitle A or any other applicable provision of Federal or State law.

''(c) CIVIL PENALTIES.—

''(1) DAMAGES.—Any customer adversely affected by an act or practice that violates this section may institute a civil action to recover damages arising from that violation.

''(2) INJUNCTIONS.—Actions of a financial institution in violation or potential violation of this section may be enjoined.

''(3) CUMULATIVE EFFECT.—The rights and remedies available under this section are in addition to any other rights and remedies available under any other provision of applicable State or Federal law.

''(d) CIVIL ACTIONS BY STATE ATTORNEYS GENERAL.—

''(1) AUTHORITY OF STATE ATTORNEYS GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by an act or practice that violates this section, the State may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction, or any other court of competent jurisdiction—

''(A) to enjoin that act or practice;

''(B) to enforce compliance with this section;

''(C) to obtain—

''(i) damages in the sum of actual damages, restitution, or other compensation on behalf of affected residents of the State; and

''(ii) punitive damages, if the violation is willful or intentional; or

''(D) obtain such other legal and equitable relief as the court may consider to be appropriate.

''(2) RULE OF CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State—

''(A) to conduct investigations;

''(B) to administer oaths and affirmations; or

''(C) to compel the attendance of witnesses or the production of documentary and other evidence.

''(3) VENUE.—Any action brought under this subsection may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1931 of title 28, United States Code.

''(4) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

''(A) is an inhabitant; or

''(B) may be found.''.

SEC. 3. DEFINITIONS.

Section 527 of the Gramm-Leach-Bliley Act (15 U.S.C. 6827) is amended—

(1) by redesignating paragraph (4) as paragraph (6);

(2) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(3) by inserting before paragraph (2), as redesignated, the following:

''(1) BREACH.—The term 'breach'—

''(A) means the unauthorized acquisition, disclosure, or loss of computerized data or paper records which compromises the security, confidentiality, or integrity of customer information, including activities proscribed under section 521; and

''(B) does not include a good faith acquisition of customer information by an employee or agent of a financial institution for a business purpose of the institution, if the customer information is not subject to further unauthorized disclosure.'';

(4) in paragraph (2), as redesignated—

(A) by striking ''person) to whom'' and inserting the following: ''person)—

''(A) to whom''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) with respect to whom the financial institution maintains information in any form, regardless of whether the financial institution is providing a product or service to or on behalf of that person.'';

(5) in paragraph (3), as redesignated—

(A) by striking ''institution' means any'' and inserting the following: ''institution'—

''(A) means any'';

(B) by inserting ''(regardless of whether the financial institution is providing any product or service to or on behalf of that customer)'' before ''and is identified''; and

(C) by striking the period at the end and inserting the following: ''; and

''(B) for purposes of section 522, includes the last name of an individual in combination with any 1 or more of the following data elements, when either the name or the data elements are not encrypted:

''(i) Social security number.

''(ii) Driver's license number or State identification number.

''(iii) Account number, credit or debit card number, or any required security code, access code, or password that would permit access to a financial account of the individual.

''(iv) Such other information as the Federal functional regulators determine is appropriate with respect to the financial institutions that are subject to their respective enforcement authority.''; and

(6) by inserting before paragraph (6), as redesignated, the following:

''(5) FEDERAL FUNCTIONAL REGULATOR.—The term 'Federal functional regulator' has the same meaning as in section 509, and includes the Federal Trade Commission.''.

SEC. 4. INCLUSION OF FRAUD ALERTS IN CONSUMER CREDIT REPORTS.

Section 605A of the Fair Credit Reporting Act (15 U.S.C. 1681c-1) is amended—

(1) in subsection (b)(1), by inserting ''or proof of a notification of a breach or suspected breach under section 522(b)(1)(C) of the Gramm-Leach-Bliley Act'' after ''theft report''; and

(2) by adding at the end the following:

''(i) NO ADVERSE ACTION BASED SOLELY ON FRAUD ALERT.—It shall be a violation of this title for the user of a consumer report to take any adverse action with respect to a consumer based solely on the inclusion of a fraud alert, extended alert, or active duty alert in the file of that consumer, as required by this subsection.''.

SEC. 5. STUDIES AND REPORTS ON IMPROVING PROTECTION OF CUSTOMER INFORMATION.

(a) ALTERNATIVE INFORMATION STORAGE METHODS.—

(1) STUDY.—The Federal Trade Commission shall conduct a study of alternative technologies, including biometrics, that may be used by financial institutions and other businesses to enhance the safeguarding of the customer information of financial institutions and other sensitive personal information. Such study shall include an analysis of how to ensure that such information does not become widespread or subject to theft.

(2) REPORT TO CONGRESS.—The Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than 6 months after the date of enactment of this Act.

(b) TRANSPORTATION OF CUSTOMER INFORMATION.—

(1) STUDY.—The Comptroller General of the United States, in consultation with the Federal functional regulators and appropriate law enforcement agencies, shall conduct a study of the cross country transport of the customer information of financial institutions and other sensitive personal information by or on behalf of financial institutions and other businesses.

(2) REPORT TO CONGRESS.—The Comptroller General shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than 6 months after the date of enactment of this Act, including any recommendations on ways that financial institutions may best reduce the risk of compromise, breach, or loss of the customer information of financial institutions and other sensitive personal information during transport.

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act.

By Mr. ENZI:

S. 1597. A bill to award posthumously a Congressional gold medal to Constantino Brumidi; to the Committee on Banking, Housing, and Urban Affairs.

Mr. ENZI. Mr. President, it is a special pleasure for me, as an Italian American to introduce legislation to the Senate that will mark the 200th anniversary of the birth of Constantino Brumidi.

As I introduce this legislation, I do so to recognize not only Constantino Brumidi, but all those who have come to our shores to pursue a dream and share in the blessings of liberty and freedom that is our birthright as American citizens.

For Constantino Brumidi, there was no higher honor or greater calling than to be an American citizen. It was a title he sought and then signed with pride on some of his best work.

That experience is by no means unique to Constantino Brumidi. The same call that he heard to come to America continues to be heard every day as more and more people from all over the world come to the United States in the pursuit of a dream and the freedom that marks our way of life.

For my own family, it wasn't all that long after Constantino Brumidi left for America that my own ancestors heard the call for freedom and came here as well. Just like Constantino Brumidi they left the beauty of Italy—its mountains and its sunny shores—to come and be a part of the great adventure that is the United States.

That is my background, and when I came to Washington to serve in the Senate, I found a renewed sense of purpose and inspiration every time I walked through the corridors of the Capitol Building and saw Constantino Brumidi's artwork so prominently and proudly displayed. This is a special place and if you walk through these halls late at night you can almost hear the whispers of the past and the hushed echoes of the voices of our Founding Fathers and past Senators and Representatives as they debated and discussed the issues of the day. Statuary Hall, home to so many of our Nation's heroes particularly draws you near as the Chamber's historical record calls to mind the legends of our past—Washington, Jefferson, Lincoln, Adams and Franklin.

That is when it hits you—that the story of the United States isn't a random series of events, but the result of the vision and heartfelt commitment of those who played an active role in our history. As an Italian American it gives me a great sense of pride to know that one of those great Americans was Constantino Brumidi.

The history books tell us that Constantino Brumidi was born in Rome of Italian and Greek heritage. He had a great talent for painting that revealed itself at an early age, and it was already beginning to earn him a reputation as one of Europe's great artists when he heard a different call—a call to make beautiful the home of democracy and liberty—the United States of America.

One day, after completing a commission, Constantino Brumidi stopped in Washington, DC, to visit the Capitol on his way home. Looking at its tall, blank walls and empty corridors, he must have felt the excitement and inspiration only an artist facing an empty canvas can know. On that day he began what was more than an assignment for him—it was a labor of love—as he brought to life the great moments in American history for all to see on the walls and ceiling of this great building. His efforts were destined to earn him the title of America's Michelangelo.

There aren't many quotes that are attributed to Constantino Brumidi, but one that appears on the marker where he is buried is a beautiful expression of his love for our country:

''My one ambition and my daily prayer is that I may live long enough to make beautiful the Capitol of the one country on earth in which there is liberty.''

That is the philosophy that guided Constantino Brumidi's hand as it fired his imagination and inspired his creations in the Capitol. Imagine what he would think if he could walk these corridors today. He would see that his beautiful work has stood the test of time and gained the appreciation and admiration of countless visitors to our shores and our Capitol Building. He would see that it continues to thrill the millions who flock here every year. I believe he would be both proud and

humbled to be the center of such attention.

It is only fitting that over the years Constantino Brumidi has become a symbol of all those who came to the United States in pursuit of a dream that we all too often take for granted. It was freedom and liberty that drew Constantino Brumidi to our land and it is what continues to draw us together, American, Italian, Greek, Irish and every other nationality you can name to make this world a better place for us all to live.

Throughout the Capitol, each carefully planned stroke of Brumidi's brush will continue to remind us that we are blessed and truly fortunate to live in a land of promise and opportunity where we are all called to greatness. Constantino Brumidi dared to be great and he will be forever remembered for the gifts and talents he shared with us.

The legislation I am introducing today will ensure that the legacy he left us all as Americans is never forgotten. Constantino Brumidi wanted one thing—to be forever remembered as an Artist Citizen of the United States—the home of liberty that he loved. We must all ensure his story continues to be told so that it may continue to serve as a source of inspiration and encouragement to all those who come to our shores that any one of them can make a difference in the world by making the most of the opportunities that are available to them here in America.

By Mr. HATCH (for himself, Mr. CRAIG, Mr. BURNS, Mr. SMITH, Mrs. LINCOLN, and Mr. SCHUMER):

S. 1598. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential safe storage device for the safe storage of firearms; to the Committee on Finance.

Mr. HATCH. Mr. President, if I may, I would like to speak very briefly on another topic. I am an unqualified supporter of the ''Protection of Lawful Commerce in Arms Act,'' on which we will be voting later today.

My colleague, Senator CRAIG, should be commended for his hard work on this important legislation, which will protect gun manufacturers and distributors from unwarranted lawsuits.

While we must always be vigilant in protecting our rights—including our Second Amendment rights—it is also critical that we encourage responsible exercise of those rights. For that reason, I want to say a few words in support of the ''Child Protection and Home Safety Act of 2005,'' which I am introducing today. This Act would promote the safe storage of firearms by providing a 25 percent tax credit toward the purchase of a gun safe, up to a maximum of $250. I am pleased that my colleagues, Senators SCHUMER, CRAIG, BURNS, LINCOLN, and SMITH, are cosponsoring this important bipartisan legislation. Our bill will encourage gun owners to purchase gun safes for the safe storage of firearms, thereby preventing the mishandling of guns and keeping our families and communities safer.

This bill has widespread support from numerous national organizations, including the National Association of Police Organizations, the American Association of Suicidology, the American Ethical Union, the National Black Police Officers Association, and SAVE, the Suicide Awareness Voice of Education. In my home State of Utah, law enforcement has given this bill unqualified support. In addition to the Utah Sheriff's Association and the Utah Police Corps, the Utah Highway Patrol Association has enthusiastically endorsed this legislation.

Mr. President, I will ask unanimous consent to include a copy of their letter of support in the RECORD.

Many of the guns used in violent acts are acquired on the black market, having been stolen from the homes of law abiding Americans. Nearly 10 percent of state prison inmates incarcerated on gun crimes say the weapons they used were stolen. Safely securing a firearm within a person's home is a fundamental way to help ensure that firearms do not fall into the wrong hands. One important step that can be taken in this regard is for families to lock firearms within a theft-resistant safe. This bill, by encouraging the purchase and use of gun safes, will significantly reduce the rate of stolen guns, thereby reducing the incidents of homicides and violent crimes.

Another problem plaguing America today is that of children gaining access to their parents' firearms and using those firearms to commit homicide or suicide. The school shootings in Columbine, Santee, Lake Worth, Florida, Fort Gibson, Oklahoma and Deming, New Mexico, are a sad legacy we hope to leave far behind us. It is the responsibility of gun owners to ensure that our children cannot gain access to firearms and unintentionally or intentionally use those firearms to harm themselves or someone else. This bill, by encouraging gun owners to lock up their firearms in gun safes, will make it more difficult for children to access their parents' guns.

Utah is home to several fine manufacturers of gun safes. The employees at companies such as Liberty, Fort Knox, and others know that while there are many ways to attempt to secure a firearm, gun safes are the best way to reliably secure firearms and keep them out of the hands of those who should not have access to them. Other methods of securing firearms may only give the purchaser a false sense of security.

Trigger locks do not prevent loading and can easily be opened by a child with a screwdriver. Cable locks can easily be cut open with a simple wirecutter. Locked case boxes are small and light and can easily be picked up and carried away by a thief.

Quality gun safes can provide the security our children and our communities deserve. And through the vehicle of a tax credit, this bill encourages gun safety while preserving Second Amendment liberties.

I want to thank everyone who has worked with us to craft this bill. By encouraging gun owners to purchase residential gun safes for the safe storage of firearms we move a little bit closer to creating a safer America.

Mr. President, I urge all of my colleagues to support the ''Child Protection and Home Safety Act of 2005,'' and I ask unanimous consent that the text of the bill and the letter to which I referred be printed in the RECORD.

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

S. 1598

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Protection and Home Safety Act of 2005''.

SEC. 2. CREDIT FOR RESIDENTIAL GUN SAFE PURCHASES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. PURCHASE OF RESIDENTIAL GUN SAFES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the amount paid or incurred by the taxpayer during such taxable year for the purchase of a qualified residential gun safe.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) with respect to any qualified residential gun safe shall not exceed $250.

''(2) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 23), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the third taxable year after the taxable year in which the purchase or purchases are made. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

''(c) QUALIFIED RESIDENTIAL GUN SAFE.—For purposes of this section, the term 'qualified residential gun safe' means a container not intended for the display of firearms which is specifically designed to store or safeguard firearms from unauthorized access and which meets a performance standard for an adequate security level established by objective testing.

''(d) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter with respect to any expense which is taken into account in determining the credit under this section.

''(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the

close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and taxpayer's spouse file a joint return for the taxable year.

''(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

''(e) ELECTION TO HAVE CREDIT NOT APPLY.—A taxpayer may elect to have this section not apply for any taxable year.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to ensure that residential gun safes qualifying for the credit meet design and performance standards sufficient to ensure the provisions of this section are carried out.

''(g) STATUTORY CONSTRUCTION; EVIDENCE; USE OF INFORMATION.—

''(1) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

''(A) as creating a cause of action against any firearms dealer or any other person for any civil liability, or

''(B) as establishing any standard of care.

''(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding the use or nonuse by a taxpayer of the tax credit under this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity for the purposes of establishing liability based on a civil action brought on any theory for harm caused by a product or by negligence, or for purposes of drawing an inference that the taxpayer owns a firearm.

''(3) USE OF INFORMATION.—No database identifying gun owners may be created using information from tax returns on which the credit under this section is claimed.''.

(b) CONFORMING AMENDMENT.—Section 6501(m) of the Internal Revenue Code of 1986 is amended by inserting ''25C(e),'' before ''30(d)(4),''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter I of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Purchase of residential gun safes.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

HEBER CITY POLICE DEPARTMENT,
Heber City, UT.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: The Utah Chiefs of Police Association enthusiastically endorses legislation which would provide a 25% tax credit toward the purchase of a gun safe, up to a maximum of $250.

This legislation would encourage gun owners to purchase gun safes for the safe storage of firearms. An increase in the use of gun safes will help prevent the theft of firearms, reducing incidents of suicide, homicide and violent crimes.

Senator Hatch, we urge you to introduce this legislation in the Senate, support it and use your best efforts to see that it gets passed. The passage of this vital legislation will prevent the mishandling of guns and keep our families and communities safer.

Thank you in advance for all your work and your support of this matter.

Sincerely,

Chief ED RHOADES,
President,
Utah Chiefs of Police Association.

By Mr. MCCAIN (for himself, Mr. ENSIGN, AND MR. KYL):

S. 1599. A bill to repeal the perimeter rule for Ronald Reagan Washington National Airport, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I am pleased to be joined by Senators ENSIGN and KYL in introducing the Abolishing Aviation Barriers Act of 2005. This bill would remove the arbitrary restrictions that prevent Americans from having an array of options for nonstop air travel between airports in western States and LaGuardia International Airport ''LaGuardia'', and Ronald Reagan Washington National Airport, ''Washington National''.

LaGuardia restricts the departure or arrival of nonstop flights to or from airports that are farther than 1,500 miles from LaGuardia. Washington National has a similar restriction for nonstop flights to or from airports 1,250 miles from Washington National. These restrictions are commonly referred to as the ''perimeter rule.'' This bill would abolish these archaic limitations that reduce consumers' options for convenient flights and competitive fares.

The original purpose of the perimeter rule was to promote LaGuardia and Washington National as airports for business travelers flying to and from East Coast and Midwest cities and to promote traffic to other airports by diverting long haul flights to Newark and Kennedy airports in the New York area and the Dulles airport in the Washington area. However, over the years, Congress has rightly granted numerous exceptions to the perimeter rule because the air traveling public is eager for travel options. Today, there are nonstop flights between LaGuardia and Denver and between Washington National and Denver, Las Vegas, Los Angeles, Phoenix, Salt Lake City and Seattle. Rather than continuing to take a piecemeal approach to promoting consumer choice, I urge Congress to take this opportunity once and for all to do away with this outdated rule.

As many in this body know, I have been fighting against the perimeter rule for years. I continue to believe that Americans should have access to air travel at the lowest possible cost and with the most convenience for their schedule. Therefore, I have always advocated for the removal of any artificial barrier that prevents free market competition. Last I co-sponsored legislation to repeal the ''Wright Amendment'' which prohibits flights from Dallas'' Love Field airport to 43 States. This week I am proud to come together with colleagues once again to eliminate another unnecessary restraint through the Abolishing Aviation Barriers Act of 2005.

Some opponents, mainly those with parochial interests, have criticized me over the years for my efforts to remove the perimeter rule for Washington National, particularly because such removal would allow flights between Phoenix and Tucson and Washington National. Due to such criticism, I made a pledge in 1998 that I would not take such flights if they were made available. Shortly thereafter, the Federal Aviation Administration granted an exemption for two nonstop flights per day between Washington National and Phoenix. I have never taken these flights. Instead I have routinely used connecting flights or flown out of Dulles International Airport. Being a frequent flier and having flown from both Dulles and Kennedy in the past few months, I can assure my colleagues, that both airports have enormous business and no longer need to be ''fed'' long haul traffic to promote airport usage.

In fact, a 1999 study by the Transportation Research Board stated that perimeter rules ''no longer serve their original purpose and have produced too many adverse side effects, including barriers to competition . . . The rules arbitrarily prevent some airlines from extending their networks to these airports; they discourage competition among the airports in the region and among the airlines that use these airports; and they are subject to chronic attempts by special interest groups to obtain exemptions.''

That same year, the Government Accountability Office, GAO, stated that the ''practical effect'' of the perimeter rule ''has been to limit entry'' of other carriers. The GAO found that airfares at LaGuardia and Washington National are approximately 50 percent higher on average than fares at similar airports unconstrained by the perimeter rule. Such an anticompetitive rule should not remain in effect, particularly where its anticompetitive impact has long been recognized. For this reason, I will continue the struggle to try to remove the perimeter rule and other anticompetitive restrictions that increase consumer costs and decrease convenience for no apparent benefit.

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. 1599

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 ''Abolishing Aviation Barriers Act of 2005''.

SEC. 2. RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

(a) IN GENERAL.—Chapter 449 of title 49, United States Code, is amended by striking section 49109.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by striking the item relating to section 49109 and inserting the following:

''44901. Repealed''.

SEC. 3. TERMINATION OF FEDERAL SUPPORT FOR PERIMETER RULE AT NEW YORK LAGUARDIA AIRPORT.

Notwithstanding any other provision of law, no Federal funds may be obligated or expended after the date of enactment of this Act to enforce the Port Authority of New York and New Jersey rule banning flights beyond 1,500 miles (or any other flight distance

related restriction), from arrival or departure at New York LaGuardia Airport.

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

S. 1600. A bill to amend the Communications Act of 1934 to ensure full access to digital television in areas served by low-power television, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I have the support of many of my colleagues on the Senate Committee on Commerce, Science and Transportation to introduce legislation to help rural America transition to an age of digital television. Television is an important media outlet for local news, weather and information. Years ago, it was decided that the United States should transition to a higher standard of television service. Digital television is much more than simply a sharper picture; it allows for an increase in the number of channels, more efficient use of spectrum and many new features for consumers. As the Senate considers broader digital television transition legislation, it is important not to leave rural America behind.

The bill I introduce today is aimed to assist translator stations and low power analog stations. Translator stations are small stations that repeat a signal from full power stations so that the signal may be reached in remote areas. Low power analog TV stations are television stations that typically serve smaller, rural communities. While translators and low power analog TV stations are located in many parts of the country, most are concentrated in rural areas, including many parts of Maine.

There has been a long time understanding that low power stations would not be a part of the full power digital television transition. This understanding, however, does not mean that Congress can simply look away. We must ensure that low power stations have the necessary time and adequate funds to move into the digital age. The Digital Low Power Television Transition Act aims to address these needs.

First, the bill I am introducing today puts a deadline for the low power digital televison transition four years out from whatever the hard date is that Congress ultimately decides for the full power digital television transition. Full power stations have had years to transition to digital. Low power stations have yet to even receive their digital allocations, and therefore need additional time to upgrade equipment. This delay will also allow consumers in rural areas to continue to use analog television sets to receive over-the-air signals until digital television equipment becomes more prevalent in small town consumer electronics stores.

Second, the Digital Translator and Low Power Television Transition bill establishes a grant program within the National Telecommunications and Information Agency, NTIA, to help defray the cost of upgrading translators and low power television stations from analog to digital. This money for the grant program would come from a trust fund set up with proceeds of the spectrum auctions that will take place because of the full power digital television transition. The Federal Communications Commission, FCC, estimates that approximately $100 million will be needed for the 4474 translators and 2071 low power analog and to upgrade. The trust fund's size reflects the FCC's estimate.

The goal of this Act is to assist the rural, low power stations without interrupting the greater digital televison transition. Because of the secondary status of translators and low power stations, the auction of full power analog spectrum will remain unaffected. These stations do play an important role in rural communities, therefore this bill calls upon the FCC to report to Congress on the status of translators and low power analog.

This bill is not meant to be a comprehensive approach to the digital television transition. It is merely a solution to one of the many questions Congress will face this Congress. Rural America deserves the same benefits that digital televison will bring that will be available in urban areas. This Act gives translators, low power analog and Class A stations the assistance they need to smoothly transition to digital.

By Mr. GRASSLEY (for himself, Mr. BAYH, and Mrs. CLINTON):

S. 1602. A bill to amend title XIX of the Social Security Act require States to disregard benefits paid under long-term care insurance for purposes of determining medicaid eligibility, to expand long-term care insurance partnerships between States and insurers, to amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, the use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs, to establish home and community based services as an optional medicaid benefit, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased to join my colleagues Senator BAYH and Senator CLINTON in introducing the Improving Long-term Care Choices Act. This legislation sets forth a series of proposals aimed at improving the accessibility of long-term care insurance and promoting awareness about the protection that long-term care insurance can offer. It also seeks to broaden the availability of the types of long-term care services such as home- and community-based care, which many folks prefer to institutional care.

Before I begin my discussion of the merits of the legislation that I am introducing today, I want to take this opportunity to once again emphasize my commitment to enacting the Family Opportunity Act. I have worked to get the Family Opportunity Act enacted for many years now.

I have been motivated to work so hard because I have been deeply moved by a number of stories from families, both from my State of Iowa and elsewhere, who have had to turn down promotions, or even put their child with a disability up for adoption in order to secure for these children the medical services they so desperately need.

The Family Opportunity Act would provide a State option to allow families with disabled children to ''buy in'' to the Medicaid program; establish mental health parity in Medicaid Home and Community Based Waiver programs; establish Family to Family Health Information Centers and restore Medicaid eligibility for certain SSI beneficiaries.

As part of the on-going negotiations relative to the FOA, many stakeholders have agreed that a modification of a feature of the President's New Freedom Initiative, a demonstration program known as ''Money Follows the Person'' should be enacted along with the FOA. Money Follows the Person allows the Secretary to provide grants to states to increase the use of home and community based care and provides States a financial incentive for the first year to do so.

I want stakeholders in the disability community as well as the many organizations who support the Family Opportunity Act to understand that the legislation I am introducing today compliments rather than supplants my efforts to enact FOA and Money Follows the Person. I believe that we should provide a wide array of options to the states to encourage them to identify and eliminate barriers to community living including access to consumer direction and respite care.

Long-term care services can be prohibitively expensive. Just one year in a nursing home can cost well over $50,000. In many cases, individuals deplete their savings and resources paying for long-term and ultimately qualify for Medicaid coverage. Right now, Medicaid pays for the bulk of long-term care services in this country. In 2002 alone, we spent nearly $93 billion on long-term care services under Medicaid. With our aging population, one thing is clear: spending will only increase.

When most people think about purchasing long-term care insurance, they think, ''that's something I can put off until tomorrow.'' We need to change the perception because the older you are when you first buy coverage, the more expensive the premiums are.

Our legislation calls for the Secretary to educate folks about the protection that long-term care insurance can offer. We envision people having the opportunity to compare policies available in their States. Among other means, this could be accomplished

through an internet website for example.

Making people aware of long-term care insurance won't go very far though, unless we make some other changes to enhance the value and protection that long-term care insurance can bring. Our bill takes several steps in this regard.

First, the legislation would require that States disregard benefits paid under a long-term care insurance policy when determining eligibility for Medicaid. Second, it incorporates a series of consumer protections recommended by the National Association of Insurance Commissioner, NAIC, into the definition of 'qualified long-term care services.' Individuals who purchase a policy that have these consumer protections will be eligible for an above the line tax deduction and a tax credit for out-of-pocket expenses made by caregivers. Third, the bill would expand the long-term care partnership program, which currently operates as a demonstration in four states. The long-term care partnerships combine private long-term care insurance with Medicaid coverage once individuals exhaust their insurance benefits. Several States would like to pursue their own long-term care partnerships and this legislation will enable them to do that.

The Improving Long-term Care Choices Act also builds on the President's New Freedom Initiative by taking further steps toward removing the ''institutional bias'' in Medicaid, giving States the option of providing home- and community-based services as part of their State Medicaid Plan.

In doing so, the bill gives States the flexibility to design long-term care benefits that will reduce the reliance on costly institutional settings and meet the needs of elderly and disabled individuals who overwhelmingly wish to remain in their homes and communities.

In his New Freedom Initiative announced shortly after taking office, President George W. Bush outlined a plan to tear down barriers preventing people with disabilities from fully participating in American society.

The President also endorses the idea of shifting Medicaid's delivery system towards one that promotes cost-effective, community-based care instead of one weighted so heavily towards institutional settings.

This legislation also challenges us to think beyond funding and program silos and directs the Secretary to address administrative barriers that impede the integration of acute and long-term care services. The Secretary also must develop recommendations for statutory changes that will make it easier for States to offer better coordinated acute and long-term care services.

The Improving Long-Term Care Choices Act is consistent with our ideals about families, individual choices in health care and financial responsibility. This bill aims high. But it is sorely evident that we need to think creatively and comprehensively, even boldly, if we hope to make the type of inroads in promoting the availability of good long-term care insurance policies and in rebalancing the institutional bias in long-term care services that no longer reflects the needs and preferences of many stakeholders.

The Improving Long-Term Care Choices Act is a good bill. The American Network of Community Options and Resources, the Arc & United Cerebral Palsy Disability Policy Collaboration, and the National Disability Rights Network, the United Spinal Association, and the Association of University Centers on Disabilities support the bill. I urge my colleagues to do the same.

I ask unanimous consent that a section-by-section summary of the legislation and letters of support be printed in the RECORD.

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

IMPROVING LONG-TERM CARE CHOICES ACT—SUMMARY

TITLE I: LONG-TERM CARE INSURANCE CONSUMER PROTECTIONS

Subtitle A

Section 101: State Medicaid Plan requirements regarding Medicaid eligibility determination, long-term care insurance reciprocity, and consumer education

Requires each state in its Medicaid plan to exclude benefits, including assigned benefits, paid under a qualified-long term care policy in determining income for purposes of determining eligibility for medical assistance.

Requires that states with a long-term care insurance partnership program to meet requirements for reciprocity to with other long-term care insurance partnership states. Reciprocity rules to be developed as specified in section 103.

Requires the Secretary to educate consumers on the advisability of obtaining long-term care insurance that meets federal standards and the potential interaction between coverage under a policy and federal and state health insurance programs.

Section 102: Additional consumer protections for long-term care insurance

Establishes additional consumer protections with respect to long-term care insurance policies based on the October 2000 National Association of Insurance Commissioners (NAIC) model regulations including non-cancellability, prohibitions on limitations and exclusions, extension of benefits, continuation of conversion coverage, discontinuance and replacement, prohibitions on post-claim underwriting, inflation protection, and prohibitions on pre-existing condition and probationary periods in replacement policies or certificates.

Issuers of long-term care insurance policies must also comply with NAIC model provisions related to disclosure of rating practices, application forms and replacement coverage, reporting, filing requirements for marketing, suitability, standard format outline of coverage, and delivery of shopper's guide.

Issuers must comply with model act policies related to right to return, outline of coverage, certificates under group plans, monthly reports on accelerated death benefits, and incontestability period.

Applies to policies issued more than 1 year after enactment.

Section 103: Expansion of State Long-term Care Partnerships

Permits the expansion of long-term care partnership insurance policies to all states.

Requires all new partnership policies to be ''qualified long-term care insurance policies'' defined as a policy that: (1) disregards any assets or resources in the amount equal payments made under the policy; (2) requires the holder, upon the policy's effective date, to reside in the state or a state with a qualified long-term care partnership; (3) includes the consumer protections specified in 7702B of the tax code as amended by Section 102 (additional consumer protections); (4) requires compound inflation protection; and (5) requires that any agent selling such policies receive training and demonstrate knowledge of such policies,

Medicaid asset protection would apply in an equal amount to the insurance benefit paid under the policy, referred to as a dollar-for-dollar model. [The four states (NY, IN, CT, and CA) that currently offer long-tenn care partnership policies that are not dollar-for-dollar may continue to offer those policies.]

Directs the Secretary to set standards for reciprocity in conjunction with states, insurers, NAIC, and other groups as deemed necessary by the Secretary not later than 12 months after enactment to provide for the portability of long-term care partnership policies from one partnership state to another partnership state.

Establishes minimum uniform reporting requirements.

Section 104: National Clearinghouse for Long-term Care Information

Provides for: (1) development of a national clearinghouse on long-term care information to educate consumers on the importance of purchasing long-term care insurance, and, where appropriate, to assist consumers in comparing long-term care insurance policies offered in their states, including information on benefits, pricing (including historic increases in premiums) as well as other options for financing long-term care and (2) establishment of a website to facilitate comparison of long-term care policies.

Authorizes such sums a necessary for the clearinghouse in fiscal year 2006 and each year thereafter.

Subtitle B

Section 121: Treatment of premiums on qualified long-term care insurance contracts

Provides individuals an above-the-line tax deduction for the cost of their qualified LTC insurance policy (as defined by HIPAA, section 7702B(b)). Phases in applicable percentage of the deduction based on the number of years of continuous coverage under a qualified LTC policy.

Section 122: Credit for taxpayers with long-term care needs

Provides applicable individuals with LTC needs or their eligible caregivers a $3000 tax credit to help cover LTC expenses. An applicable individual is one who has been certified by a physician as needing help with at least 3 activities of daily living, such as eating, bathing, dressing. LTC tax credit would be phased-in over 4 years as follows: $1000 in 2005, $1500 in 2006, $2000 in 2007, $2500 in 2008, and $3000 in 2009 or thereafter. The credit phases out by $100 for each $1000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount set at $150,000 for a joint return and $75,000 for an individual return.

Section 123: Treatment of exchanges of long-term care insurance contracts

Includes a waiver of limitations, allowing individuals to make claims if there are changes to law.

TITLE II: MEDICAID HOME AND COMMUNITY-BASED SERVICES OPTIONAL BENEFIT

Section 201: Medicaid Home and Community-Based Services Optional Benefit

Provides states with a new option to offer home and community-based services to Medicaid-eligible individuals without obtaining a federal waiver. Under this option states may include one or more home and community-based services currently available under existing waiver authority. States would also be permitted to allow individuals to choose to self-direct services. Under this option, states must establish a more stringent eligibility standard for placement of individuals in institutions, than for placement in a home and community-based setting. States would be permitted to offer a limited benefit consisting of home and community-based services only, to certain populations not otherwise eligible for Medicaid, but not to exceed individuals whose income exceeds 300% of SSI income and resource standards. At states option, provides presumptive eligibility for aged, blind and disabled for home and community-based services. If enrollment under the state plan exceeds state projections, the state would be permitted to change eligibility standards to limit enrollment for new applicants, while grandfathering those individuals already receiving services.

TITLE III: INTEGRATED ACUTE AND LONG-TERM CARE SERVICES FOR DUALLY ELIGIBLE INDIVIDUALS

Section 301: Removal of barriers to integrated acute and long-term care services for dually eligible individuals

Directs the Secretary, in collaboration with directors of State Medicaid programs, health care issuers, managed care plans, and others to issue regulations removing administrative barriers that impede the offering of integrated acute, home and community-based, nursing facility, and mental health services, and to the extent consistent with the enrollee's coverage for such services under Part D, prescription drugs. The Secretary also must submit recommendations to address legislative barriers to offering integrated services. The Medicare Payment Advisory Commission (MedPAC) will comment on the Secretary's recommendations.

AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES,
Alexandria, VA, July 29, 2005.

Hon. CHARLES GRASSLEY,
Hon. EVAN BAYH,
U.S. Senate, Washington, DC.

DEAR SENATORS GRASSLEY AND BAYH: On behalf of the American Network of Community Options and Resources (ANCOR)—the national association representing more than 850 private providers of supports and services to more than 380,000 people with significant disabilities—we extend our appreciation and offer our support in the introduction today of your ''Improving Long-Term Care Choices Act of 2005.''

It is especially noteworthy that you introduced this bill on the eve of Medicaid's 40th anniversary. Medicaid has worked for millions of people with disabilities, improving their lives over the past four decades. However, Medicaid can and should do better on behalf of the 8 million individuals with disabilities that depend daily upon this program for their health services and long-term supports. This is a propitious moment to send a message to the nation—people with disabilities can count on Medicaid. It makes clear to all that Congress intends to maintain its commitment for a strong federal role in enhancing the lives of people with disabilities.

People with disabilities, their families, and providers have for years called for the removal of Medicaid's institutional bias. ANCOR provided testimony in. September of 2001 in conjunction with the President's New Freedom Initiative that the Congress must change the structure of Medicaid to include state plan home and community-based services. Your bill builds upon the President's initiative, the Supreme Court's Olmstead decision, and ANCOR's commitment to community integration.

In addition to helping millions of people of all ages who depend upon Medicaid for long-term supports, your legislation will assist millions of moderate-income Americans to address their future long-term needs. By encouraging reliable long-term care insurance and tax incentives to defray costs for long-term needs, your bill begins the important process to adopt a national comprehensive long-term care policy. This step is critical as the nation stands on the precipice of the fast approaching ''sleeping giant''—the retirement of the baby boom generation and shift in demographics. In this way, the bill will help reduce the financial pressures on Medicaid and our nation's reliance on it as the only public long-term care program.

ANCOR is pleased and proud to offer its support to you on this momentous day and to pledge our help in making the ''Improving Long-Term Care Choices Act of 2005'' a reality this session. We are grateful for your leadership and ongoing commitment to people with disabilities and those who provide them with daily supports.

Sincerely,

SUELLEN R. GALBRAITH,
Director for Government Relations.

DISABILITY POLICY COLLABORATION,
Washington, DC, July 29, 2005.

Hon. CHARLES GRASSLEY,
Hon. EVAN BAYH,
U.S. Senate.

DEAR CHAIRMAN GRASSLEY AND SENATOR BAYH: The Arc of the United States and United Cerebral Palsy strongly support your introduction of the Improving Long-Term Care Choices Act. The Arc is the national organization of and for people with mental retardation and related developmental disabilities and their families. United Cerebral Palsy is a nationwide network of organizations providing advocacy and direct services to people with disabilities and their families.

The creation of a Medicaid home and community-based services optional benefit is an important improvement in the federal/state Medicaid program and one for which we have advocated for many years. We believe that the addition of this benefit as an option for states will make it easier for states to serve people with severe disabilities where they want to be served—in their own home communities, rather than in institutions or other facilities. This will increase opportunities for improved quality of life for many children and adults with severe disabilities and their families.

We applaud your efforts and are grateful for your leadership in introducing this important legislation and pledge to work with you to secure its passage and enactment.

Sincerely,

PAUL MARCHAND,
Staff Director,
Disability Policy Collaboration.

NATIONAL DISABILITY RIGHTS NETWORK,
Washington, DC, July 29, 2005.

Hon. CHARLES GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. Through training and technical assistance, legal support, and legislative advocacy, NDRN works to create a society in which children and adults with all types of disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.

NDRN strongly supports your introduction of the Improving Long Term Care Choices Act of 2005. One of the major goals of the P&A/CAP network is for all individuals with disabilities to live in their own communities—independently, with their families, or with other individuals of their choice. Your determination in bringing forward this bill—with the critical component of establishing home and community-based services and supports as a optional Medicaid benefit, instead of only available through a waiver—is a major step in the right direction.

NDRN and the entire P&A/CAP network look forward to the day when community-based supports and services for children and adults with disabilities are the norm and institutional services are non-existent or require a waiver.

We believe that this bill also is very important because it will shine a light on the need for a true long-term care system in our nation. While long-term care insurance is not the answer for everyone, it can be useful—if affordable and if it covers people for a long enough span of time; The availability of long-term care insurance also could help to take the pressure off of the Medicaid program.

Thank you again for your continuing recognition of the needs of children and adults with disabilities and their families. The disability community looks upon you as one of its leading advocates in the U.S. Congress. NDRN is pleased to offer any help it can in moving the Long-Term Care Choices Act through this session of Congress. Please contact Dr. Kathleen McGinley, 202–408–9514, Kathy.mcginley@ndrn.org.

Sincerely,

LYNN BREEDLOVE,
President,
NDRN Board of Directors.

UNITED SPINAL ASSOCIATION,
Washington, DC, July 29, 2005.

Hon. CHARLES GRASSLEY,
Hon. EVAN BAYH,
U.S. Senate,
Washington, DC.

DEAR SENATORS GRASSLEY AND BAYH: United Spinal Association, a national disability advocacy organization dedicated to enhancing the quality of life for individuals with spinal cord injury or spinal cord disease by assuring quality health care, promoting research, and advocating for civil rights and independence, thanks you for introducing the Improving Long Term Care Choices Act of 2005. United Spinal applauds your leadership in bringing forward such an important measure, which will assist thousands of Americans with disabilities become more fully integrated and participating members of their communities.

The Improving Long Term Care Choices Act would help states rebalance their long term supports systems away from an institutional bias by giving states the flexibility to

offer community services and supports as a state plan option under Medicaid. The proposal would also encourage individuals to purchase private long-term care insurance, which could help elevate some of the financial pressures off of state Medicaid programs. In addition, this bill will help states in their efforts to comply with the Supreme Court Olmstead decision.

People with disabilities should be able to live and work in their communities, not segregated in large and costly institutions. This system reform is long overdue. Thank you again for your vision, courage and ongoing leadership to create public policy that promotes independence, productivity and integration of people with disabilities in their communities. United Spinal would like to offer any assistance you need in moving the Improving Long Term Care Choices Act through this session of Congress. Please contact me at (202) 331–1002 for assistance.

Sincerely,

KIMBERLY RUFF-WILBERT,
Policy Analyst,
United Spinal Association.

ASSOCIATION OF UNIVERSITY CENTERS ON DISABILITIES,
Silver Spring, MD, July 29, 2005.

Hon. CHARLES GRASSLEY,
Hon. EVAN BAYH,
U.S. Senate,
Washington, DC.

DEAR SENATORS GRASSLEY AND BAYH: On behalf of the Association of University Centers on Disabilities (AUCD), a national network that provides education, training and service in developmental disabilities, we want to thank you for introducing the Improving Long Term Care Choices Act of 2005. The Association of University Centers on Disabilities (AUCD) applauds your leadership in bringing forward such an important measure, which will assist thousands of Americans with disabilities to be more fully integrated and participating members of their communities.

The Improving Long Term Care Choices Act would help states rebalance their long term supports systems away from an institutional bias by giving states the flexibility to offer community services and supports as a state plan option under Medicaid. The proposal would also encourage individuals to purchase private long-term care insurance which will help take some of the financial pressure off the Medicaid program. It will also help states in their efforts to comply with the Supreme Court Olmstead decision.

People with disabilities should be able to live and work in the community with or close to family and friends, not segregated in large and costly institutions. This system reform is long overdue.

Thank you again for your vision, courage and ongoing leadership to create public policy that promotes independence, productivity and integration of people with disabilities in their communities. AUCD would like to offer any assistance you need in moving the Improving Long Term Care Choices Act through this session of Congress. Please contact Kim Musheno at 301–588–8252 for assistance,

Sincerely,

ROBERT BACON,
Co-Chair,
AUCD Governmental Affairs Committee.
LUCILLE ZEPH,
Co-Chair,
AUCD Governmental Affairs Committee.

Mrs. CLINTON: Mr. President, I am proud to rise today to introduce the Improving Long-Term Care Choices Act with Senator GRASSLEY and Senator BAYH. This legislation would take several important steps toward assisting Americans and their caregivers to meet their long-term care needs.

Issues related to long-term care are of growing concern to many in New York and around the Nation. Individuals and families are struggling to afford costly care, obtain appropriate information regarding long-term care insurance, and maintain dignity and choice regarding these important services. As I talk with seniors around the State of New York and throughout the country, what I hear most is that people want to stay in their homes with their loved ones for as long .as they can. However, too many individuals and families struggle to be able to afford quality home and community based care. In addition, families are unsure where to find the resources they need to purchase long-term care insurance.

That is why I have joined with my colleagues to introduce this legislation. The Improving Long-Term Care Choices Act will assist individuals in meeting their long-term care needs, while reducing Medicaid costs.

This bill will improve access to home and community based services through Medicaid that will help seniors remain in their homes and communities. It will also expand long-term care insurance consumer protections, provide tax deductions for the cost of long-term care insurance, and allow tax credits for individuals and their caregivers to help cover long-term care expenses not covered by insurance. Finally, this legislation would establish a national clearinghouse on long-term care information.

This legislation takes some important steps to assist individuals and families in gathering the resources necessary to prepare for their long-term care needs and gain access to services in their preferred choice of setting.

I look forward to continuing to work with Senators GRASSLEY and BAYH and all of my colleagues to ensure that all Americans have access to the resources that help them access high quality long-term care.

By Ms. SNOWE:

S. 1603. A bill to establish a National Preferred Lender Program, facilitate the delivery of financial assistance to small businesses, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to discuss a bill, the Small Business Lending Improvement Act of 2005, which I have introduced today to provide small businesses with easier access to loans and to increase efficiency in the Small Business Administration's largest loan program, the 7(a) program, which provided $12.7 billion in small business loans in 2004.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I am committed to supporting our Nation's Main Street small business community by increasing its access to capital. This legislation will reform a cumbersome SBA lender licensing process that does not provide our small businesses with the most efficient means of accessing the capital they must have to start and sustain their firms. The bill would allow the SBA's 7(a) loan program to better capitalize on the demonstrated potential small business have to create jobs and economic growth.

As our Nation continues to prosper from economic growth, low inflation, and low unemployment, we should not forget the critical role played by our small businesses. Without strong and successful small businesses, our prosperity would not be what it is today.

Under current law, the most prolific lenders in the SBA's 7(a) loan program can participate in the ''Preferred Lender Program'' (PLP Program), which allows them to use their own processing facilities and therefore both increases lenders' efficiency and reduces costs for the SBA. However, PLP lenders are required to apply for PLP status in each of the 71 SBA districts nationwide to obtain PLP status in that district, and they must re-apply each year in each district. This is extremely inefficient and wasteful, and creates enormous unnecessary administrative costs.

Section 2 of this bill would allow qualifying lenders to participate in the PLP Program on a nationwide basis after just one licensing process. This provision was in S. 1375, the Small Business Administration 50th Anniversary Reauthorization Act of 2003, which I introduced in 2003 and which the Senate approved unanimously in September 2003.

This provision would drastically reduce administrative costs and would standardize the operation of the PLP program. A National Preferred Lenders Program would eliminate the inefficiencies and cost of applying for PLP status in each district, and would increase the ease with which loans are made to small businesses, thereby improving small businesses' access to capital. Competition among lenders for small business customers would increase, increasing financing alternatives and lowering costs for small businesses.

In addition to simplifying licensing processes for both lenders and the SBA, the bill would allow the SBA's lender oversight to be done more efficiently and effectively, on a national basis. The current process of having to renew licenses in each district is extremely time-consuming and administratively burdensome for the lenders and the SBA. A National Preferred Lenders Program could remedy the inefficiencies and cost of applying for PLP status in each district and save a tremendous amount of taxpayer dollars.

Section 3 of the act increases the maximum size of a 7(a) loan to $3 million, from the current $2 million, and increase the maximum size of a 7(a)

guarantee to $2.25 million, from the current $1.5 million. This would maintain the maximum 75 percent guarantee. Small businesses' financing needs are increasing and, especially with the high cost of real estate and new equipment, it is appropriate to respond to those needs by offering larger loans.

In the SBA's 504 Loan Program, loans may now be as large as $10 million, with $4 million guaranteed, for manufacturing projects, $5 million (with $2 million guaranteed) for loans that serve an enumerated public policy goal (such as rural development), and $3.75 million (with $1.5 million guaranteed) for all other ''regular'' 504 Program loans. Thus, this increase in 7(a) Program loans to $3 million would bring 7(a) loans closer in size to 504 Program loans, while still leaving 7(a) loans smaller than 504 Program loans.

Section 4 of the bill increases the program's authorization level to $18 billion for fiscal year 2006, instead of the $17 billion authorized for fiscal year 2006 in the Omnibus Appropriations Act, enacted in December 2004. The program is on pace to achieve loan volume of between $14 and $15 billion in fiscal year 2005, and this provision would allow the program adequate ability to grow unimpeded in fiscal year 2006, especially if the maximum loan size is increased.

Section 5 of the bill requires the SBA to implement an alternative size standard, in addition to the program's current standard, for the 7(a) program. The SBA would create an alternative size standard for the 7(a) program, as it has already done for the 504 program, that considers a business's net worth and income. This provision would bring the 7(a) program into conformity with the 504 Program. This provision was also in S. 1375 in the 108th Congress, passed unanimously by the Senate in 2003.

Currently, in the 7(a) program a small business's eligibility to receive a loan is determined by reference to a multipage chart that has different size standards for every industry that can be very confusing, especially for small lenders that do not make many 7(a) loans. In the 504 Program, however, lenders can use either the industry-specific standards or an ''alternative size standard'' that the SBA created, which simply says a small business is eligible for a loan if it has gross income of less than $7 million or net worth of less than $2 million.

This would simplify the 7(a) lending process and provide small businesses with a streamlined procedure for determining if they are eligible for 7(a) loans, and it would conform the standards used by the 7(a) and 504 programs. It would make the program far more accessible to small businesses and small lenders.

All of these improvements to the SBA's largest loan program will support our national goal of building a vibrant and growing economy. Small businesses are the heart of our economy, and this bill will help to improve small businesses' economic prospects.

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. 1603

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Lending Improvement Act of 2005''.

SEC. 2. NATIONAL PREFERRED LENDERS PROGRAM.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended by adding at the end the following:

''(E) NATIONAL PREFERRED LENDERS PROGRAM.—

''(i) ESTABLISHMENT.—There is established the National Preferred Lenders Program in the Preferred Lenders Program operated by the Administration, in which a participant may operate as a preferred lender in any State if such lender meets appropriate eligibility criteria established by the Administration.

''(ii) TERMS AND CONDITIONS.—An applicant shall be approved under the following terms and conditions:

''(I) TERM.—Each participant approved under this subparagraph shall be eligible to make loans for not more than 2 years under the program established under this subparagraph.

''(II) RENEWAL.—At the expiration of the term described in subclause (I), the authority of a participant to make loans for the program established under this subparagraph may be renewed based on a review of performance during the previous term.

''(III) EFFECT OF FAILURE.—Failure to meet the criteria under this subparagraph shall not affect the eligibility of a participant to continue as a preferred lender in a State or district in which the participant is in good standing.

''(iii) IMPLEMENTATION.—

''(I) REGULATIONS.—As soon as is practicable, the Administrator shall promulgate regulations to implement the program established under this subparagraph.

''(II) PROGRAM IMPLEMENTATION.—Not later than 120 days after the date of enactment of this subparagraph, the Administrator shall implement the program established under this subparagraph.''.

SEC. 3. MAXIMUM LOAN AMOUNT.

Section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended by striking ''$1,500,000 (or if the gross loan amount would exceed $2,000,000)'' and inserting ''$2,250,000 (or if the gross loan amount would exceed $3,000,000)''.

SEC. 4. SECTION 7(a) AUTHORIZATION FOR FISCAL YEAR 2006.

Section 20(e)(1)(B)(i) of the Small Business Act (15 U.S.C. 631 note) is amended by striking ''$17,000,000,000'' and inserting ''$18,000,000,000''.

SEC. 5. ALTERNATIVE SIZE STANDARD.

Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) is amended—

(1) by striking ''When establishing'' and inserting the following: ''ESTABLISHMENT OF SIZE STANDARDS.—

''(A) IN GENERAL.—When establishing''; and

(2) by adding at the end the following:

''(B) ALTERNATIVE SIZE STANDARD.—

''(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subparagraph, the Administrator shall establish an alternative size standard under paragraph (2), that shall be applicable to loan applicants under section 7(a) or under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.).

''(ii) CRITERIA.—The alternative size standard established under clause (i) shall utilize the maximum net worth and maximum net income of the prospective borrower as an alternative to the use of industry standards.

''(iii) INTERIM RULE.—Until the Administrator establishes an alternative size standard under clause (i), the Administrator shall use the alternative size standard in section 121.301(b) of title 13, Code of Federal Regulations, for loan applicants under section 7(a) or under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.).''.

By Mr. KYL (for himself, Mr. PRYOR, Mr. CORNYN, Mr. GRAHAM, Mr. BROWNBACK, and Mr. CHAMBLISS):

S. 1605. A bill to amend title 18, United States Code, to protect public safety officers, judges, witnesses, victims, and their family members, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the Law Enforcement Officers' Protection Act of 2005. This act will guarantee tough, mandatory punishment for criminals who murder or assault police officers, firefighters, judges, court employees, ambulance-crew members, and other public-safety officers in the course of their duties. Attacks on police officers and judges are serious crimes. They merit the toughest penalties. LEOPA imposes the following terms of imprisonment for attacks on public-safety officers: (1) second degree murder, 30 years to life; (2) voluntary manslaughter, 15 to 40 years; (3) assault resulting in serious bodily injury, 15 to 40 years; (4) assault with a dangerous weapon, 15 to 40 years; and (5) assault resulting in bodily injury, 5 to 20 years. The act also imposes commensurate penalties for retaliatory murders, kidnappings, and assaults committed against the family members of public-safety officers.

LEOPA includes additional provisions that will deter attacks upon police officers. The act expedites Federal-court review of state convictions for murder of a public-safety officer; it limits the damages that can be recovered by criminals for any injuries experienced during their arrest; it removes arbitrary barriers to retired officers' right to carry concealed weapons under Federal law; it makes it a crime to publicize a public-safety officer's identity in order to threaten or intimidate him; and it increases existing penalties for obstruction of justice and interference with court proceedings.

Aggravated assaults against police officers are a serious national problem. According to the most recent F.RI. report on the subject, 52 law-enforcement officers were feloniously killed in the United States in 2003. In the 10 year period from 1994 through 2003, a total of 616 lawenforcement officers were feloniously killed in the line of duty in the United States.

These officers' assailants unquestionably are among the worst criminals. Of those individuals responsible for unlawful killings of police officers between 1994 and 2003, 521 had a prior criminal arrest, including 153 who had a prior arrest for assaulting a police officer or resisting arrest. The individuals who commit these types of offenses are among the most dangerous members of the criminal class. Tough sentences for these criminals not only protect those who risk their lives to protect us; they also directly protect the public at large by removing a dangerous class of criminals from society.

Ordinary assaults against police officers have become a widespread problem. More than 57,000 law enforcement officers were assaulted in the course of their duties in 2003, and more than a quarter of these assaults resulted in injury to the officer. These numbers represent more than one of every 10 officers serving in the United States. Our society apparently has reached a point where criminals feel entitled to assault a police officer when they are being arrested. LEOPA is designed to change that understanding, to show criminals that assaults against police officers are unacceptable.

It bears mention that because of improvements in technology, recent years' numbers of officers killed in the line of duty even understate the extent of the violence that officers face. As the Los Angeles Times noted in 1994, ''the number of officers killed—an average of 60 to 70 a year since the late 1980s—would have broken records, too, if not for the advent of bulletproof vests, police experts say; about 400 officers have survived shootings over the last decade because they were wearing protective armor.'' (Faye Fiore & Miles Corwin, Toll of Violence Haunts Families of Police Officers, N.Y. Times, Feb. 21, 1994, at 1). As the executive director of the Fraternal Order of Police noted recently, ''there's less respect for authority in general and police officers specifically. The predisposition of criminals to use firearms is probably at the highest point in our history.'' (Jerry Nachtigal, Crime Down, but Number of Police Officers Killed Holds Steady, Associated Press Newswires, Apr. 11, 1999).

Violence against police officers also inhibits effective law enforcement. It breeds caution among officers and hinders robust investigation. LEOPA is designed to restore balance to the law. It is designed to ensure that police officers do not fear for their safety when enforcmg the law, but instead, that criminals fear the consequences of breaking the law.

Finally, aside from their broader effects on law enforcement and society, aggravated assaults and murders of police officers simply are terrible crimes. The victims often are young and in the prime of life, leaving behind young children, spouses, and grieving parents. A few recent incidents in the news serve to illustrate the horrific toll that these homicides take on the surviving victims:

Los Angeles County Deputy Sheriff Shayne York, 26 years old, was murdered during an invasion robbery while waiting for his fiancee at a hair salon on August 16, 1997. He was killed solely because of his status as a police officer. The Los Angeles Times gave the following account of the crime from the testimony at the killer's trial:

> The robbers yelled racial slurs and ordered customers and employees to the floor, snatching valuables from everyone inside. When one of the bandits found a law enforcement badge in York's wallet, he kicked York as he lay on the ground, according to testimony from [York's fiancee], also a Los Angeles County sheriff's deputy. The gunman asked York if he ever mistreated blacks and Crips gang members at Los Angeles County's Pitchess Detention Center, where York worked. York responded, ''No, sir.'' [The killer,] an alleged Crips gang member, then pointed a pistol at the back of York's head and squeezed the trigger, prosecutors said. [York's fiancee] testified she saw York's body go limp as she felt his blood flowing onto her legs. She said she heard the gunman say, ''I always wanted to kill a pig.'' (Jack Leonard & Monte Morin, Man Guilty of Killing Off-Duty Deputy, L.A. Times, Aug. 23, 2000, at B1.)

Deputy York's killer never expressed any remorse over this senseless crime. When jurors read their verdict at his trial, he shouted at them, ''May Allah kill you all, pagans, infidels.'' (Stuart Pfeifer & Richard Marosi, Jury Recommends Death for Robber Who Killed Deputy, L.A. Times, Sept. 8, 2000, at B7.)

California Highway Patrol Officer Don Burt, 25 years old, was shot seven times by a member of a street gang during a traffic stop on July 13, 1996. As Officer Burt lay wounded on the ground, the killer shot him in the head. The Los Angeles Times, covering the killer's trial, gave the following account of the testimony describing the devastating impact of Officer Burt's death on his family:

> [Don Burt's father] relived some of his happiest memories with his son—the wedding of his son and [daughter-in-law] Kristin, and the day he was told he was going to be a grandfather. But the proudest moment for both father and son was when the younger Burt joined the Highway Patrol. ''I pinned on his badge and 1 hugged him,'' the father said, tearfully. ''The proudest I'd ever seen him. The gleam he had in his eye—he was so proud.''
>
> It was a quiet summer night the night his son died, [Burt's father] told the 12-member jury. He and his wife had just finished dinner. The telephone rang. It was their daughter-in-law's father, also a CHP officer, saying there had been a shooting in the area that the younger Burt patrolled. The elder Burt, a 30–year veteran trooper, called the CHP dispatch center to learn more. A patrol car arrived to take the parents to the hospital. ''We drove [to the hospital] in dead silence,'' Burt said. ''I knew my son was dead and 1 couldn't tell my wife. She was sitting there with hope and 1 couldn't tell her.''
>
> Jeannie Burt said she didn't realize how serious her son's injuries were until a few minutes after they arrived at the hospital. ''I thought he wasn't hurt too bad, that everything was going to be all right,'' Jeannie Burt told jurors. But then, ''I saw Kristin's brother and he just shook his head. And 1 knew my son was dead.'' Tears streamed down Jeannie Burt's cheeks through most of her testimony. ''He wasn't perfect, but pretty close to it,'' the mother said through her tears. ''I'm grateful 1 had my son for the 25 years 1 had him. 1 wouldn't trade that with anything. I'm just so sad that my daughter-in-law has lost the love of her life. That his son does not have a father.''
>
> Kristin Burt, widow of the slain officer, said she was seven months pregnant with their first child when her husband of nearly three years was killed. She took the stand Monday, faltering and fighting back tears as she described how the coroner told her that her husband was dead. The coroner ''held my hand and slipped Don's wedding ring into my hand,'' Kristin Burt said. (Louis Roug & Meg James, Rage in the Courtroom, L.A. Times, Apr. 18, 2000, at B1.)

Officer Burt's son, Cameron, was born two months after he was killed.

Compton Police Officers Kevin Burrell and James MacDonald were shot and killed by a wanted criminal during a traffic stop on February 22, 1993. Newspapers gave the following account of the crime: ''The officers were wearing bulletproof vests when they stopped a red pickup truck about 11 p.m., but were knocked to the ground by bullet wounds to their limbs. With the officers lying in the rain-soaked street, [the killer] pumped bullets into their heads, execution-style.'' (Jodi Wilgoren, Killer of 2 Compton Police Officers Sentenced to Death, L.A. Times, Aug. 16, 1995, at 1.)

Officers Burrell and MacDonald were both young men, with all of their parents still living, at the time of their deaths. At the killer's trial, their families described the deep trauma that the crime created. The Los Angeles Times gave the following account:

> One after another, the mothers and fathers of Officers James Wayne MacDonald and Kevin Michael Burrell took the stand to cry out their losses. Three could not complete their testimony without breaking down so badly that court recessed. Burrell's mother told how she had heard the shots that killed her son a few blocks from her home. MacDonald's father, sobbing uncontrollably, blurted, ''Come home, Jimmy, let me trade places with you,'' when he was asked what he would tell his son if he could bring him back.
>
> James and Tonia MacDonald told how they visit their son's grave twice each day in their hometown of Santa Rosa, just to chat. Clark and Edna Burrell told how neither of them can bear to visit the cemetery where their son now lies.
>
> ''I heard the shots,'' Edna Burrell said. Then she told how she reasoned that her son had been hit. ''I was listening to my police scanner,'' she said, ''and I knew it was Kevin because I didn't hear them call his name'' on other dispatch calls. ''So when she (a police officer) knocked on my door, all I could do is scream, 'Oh God, they shot my baby. '', With that, Edna Burrell broke down. Overwhelmed, she was led from the courtroom, past where [the killer] sat staring straight ahead. Sobbing softly, she repeated what she had said on the stand: ''How could he do that? How could he do that?''
>
> Both sets of parents said the deaths of their sons left them feeling empty, lost and angry. ''The whole time I was praying, just to let Jimmy live until I could see him again,'' Tonia MacDonald sobbed, remembering the hours after she was told about the

shooting. ''And then I was so mad at God. All I wanted was to see him one more time.''

All four parents said old friends have fallen away as grief consumed their lives. Mother's Day, James MacDonald testified, has become unbearable. ''This year, when I got up, I didn't tell her (his wife) 'Happy Mother's Day' because it's a tough day,'' he said. ''I could see the tears in her eyes.'' (Emily Adams, Slain Officers'' Parents Tell of Pain, L.A. Times, June 1, 1995, at 1.)

It bears mention that all of the criminals responsible for the murders described here were convicted of capital offenses, and will be subject to the expedited federal review provisions in section 6 of LEOPA once they complete their State appeals.

Section 6 of the bill is named for Dr. John B. Jamison, a Coconino County, AZ, Reserve Sheriffs Deputy who was murdered while responding to a fellow deputy's call for assistance on September 6, 1982. The killer fired 30 rounds from an assault rifle into Dr. Jamison's car, killing the deputy before he could reach his gun or even unbuckle his seatbelt. Dr. Jamison was survived by his 13-year-old son and 10–year-old daughter. State courts completed their review of the killer's conviction and sentence in 1985. Federal courts then delayed the case for an additional 15 years. One judge on the U.S. Court of Appeals for the Ninth Circuit even tried to postpone the killer's final execution date on the alleged basis that the killer was wrongfully denied state funds to investigate a rare neurological condition that his lawyer had learned of while watching television. Dr. Jamison's killer ultimately was executed in 2000—18 years after the crime occurred, and 15 years after federal habeas-corpus proceedings began.

Section 6 is designed to prevent these kinds of delays in Federal review of cases involving state convictions for the murder of a public-safety officer. In the district court, parties will be required to move for an evidentiary hearing within 90 days of the completion of briefing, the court must act on the motion within 30 days, and the hearing must begin 60 days later and last no longer than 3 months. All district-court review must be completed within 15 months of the completion of briefing. In the court of appeals, the court must complete review within 120 days of the completion of briefing. In most cases, these limits will ensure that federal review of a defendant's appeal is completed within less than 2 years. This section also makes these deadlines practical and enforceable by limiting federal review to those claims presenting meaningful evidence that the defendant did not commit the crime—defendants would be barred from re-litigating claims unrelated to guilt or innocence. (Defendants still will be permitted to litigate all their legal claims in state court on direct review and state-habeas review, and in petitions for certiorari in the U.S. Supreme Court.)

The need for this provision is particularly stark in the judicial circuit that includes my home state of Arizona. The U.S. Court of Appeals for the Ninth Circuit's pattern of blocking capital punishment for all murderers—including those who kill police officers—is well documented. A recent committee report of the U.S. Senate, for example, notes that: ''Data for the last ten years show that outside of the Ninth Circuit, usually 70 to 80 percent of death sentences are affirmed by a [federal] Court of Appeals on collateral review. In almost every year, however, the Ninth Circuit has reversed the majority of death sentences that it reviews. Moreover, this percentage has climbed sharply in recent years . . . In the last three years, the Ninth Circuit has reversed 88 percent, 80 percent, and 86 percent of the death sentences that it has reviewed.'' (S. Rep. No. 107–315 (2002), at 72–73) The Senate report also notes that a core group of Ninth Circuit judges vote to reverse virtually every death sentence that they review. Judge Stephen Reinhardt, for example, had reviewed 31 death sentences by 2002, and voted to reverse every single one. Other Ninth Circuit judges have similar records.

As Ninth Circuit Judge Alex Kozinski has noted, ''there are those of my colleagues who have never voted to uphold a death sentence and doubtless never will.'' He continued: ''Refusing to enforce a valid law is a violation of the judges' oath—something that most judges consider a shameful breach of duty. . . . [But] to slow down the pace of executions by finding fault with every death sentence is considered by some to be highly honorable.'' (Alex Kozinski, Tinkering with Death, The New Yorker, Feb. 10, 1997, at 48–53)

This pattern of behavior extends to the Ninth Circuit's review of death sentences imposed for the murder of police officers. In the nine States under the Ninth Circuit's jurisdiction, 34 criminals have been sentenced to death for murdering police officers since the late 1970's. Only one—the man who killed Dr. Jamison—has ever been executed. The Ninth Circuit consistently has obstructed all other death sentences for criminals convicted of murdering police officers in the western States.

As one Orange County newspaper columnist notes, these numbers reflect poorly on our society's commitment to ensuring justice for slain police officers and their families:

When California voters reinstated the death penalty in 1978, they made killing an on-duty peace officer one of the ''special circumstances'' that could subject the killer to execution. The idea behind that was simple enough. If you made killing a cop a death-penalty offense, maybe it would make criminals think twice before doing it. . . . But it's doubtful that the special circumstance concerning peace officers strikes any fear into the heart of a would-be cop-killer. Because in the 24 years since the new death-penalty law was passed, not one cop-killer has been executed in California. During that time, more than 200 California peace officers have been murdered in the line of duty, including eight in Orange County, and dozens of cop-killers have been sent to death row. But not one has died for his crime. True, California hasn't been in any hurry to execute other murderers, either. Since 1978, more than 700 killers have been sent to death row, but only 10 have been executed. But the justice system seems particularly reluctant to actually enforce the death penalty against cop-killers. ''That sends a terrible message,'' says Marianne Wrede of Anaheim Hills, whose son, West Covina Police Officer Kenneth Wrede, was murdered in 1983. ''It says the justice system doesn't respect the sacrifices of police officers and their families.'' (Gordon Dillow, State Balks at Executing Cop-Killers, The Orange County Reg., Dec. 5, 2002)

These unconscionable delays have greatly increased the suffering experienced by the surviving families of murdered police officers. Again, a few examples from recent news stories illustrate the nature of the problems created by the current system of decades-long post-conviction review:

On August 31, 1983, West Covina Police Officer Kenneth Wrede, 26 years old, responded to a call about a man behaving strangely in a residential neighborhood. Wrede confronted the man, who became abusive and tried to hit Wrede with an 8–foot tree spike. Wrede could have shot the man, but instead attempted to defuse the situation. The man then reached into Wrede's car and ripped the shotgun and rack from the dashboard. Wrede drew his gun and persuaded the man to lay down the shotgun, but the man picked it up again when Wrede lowered his revolver and shot Wrede in the head, killing him instantly.

Years later, Wrede's parents described the terrible impact of this crime on their family. Marianne Wrede told of how ''a half hour before local television newscasts would broadcast the story, her doorbell rang. On the steps stood her son's commander and a police lieutenant. Between them stood Kenneth Wrede's distraught wife. 'I knew it was bad news,' Marianne Wrede said. 'I shut the door in their faces and I said, 'It can't be my boy.'' '' (Laura-Lynne Powell, Grief Unites Kin of Fallen Officers, The Orange County Reg., June 20,1991, at EO1) Many years after the crime, she reflected that ''every day I miss my son and it never goes away.'' (Anne C. Mulkern & Tiffany Montgomery, Caring Counts in Line of Duty, The Orange County Reg., Sept. 25, 1996, at BO1) Ken Wrede's father also described the impact of the loss of his son. ''My life will never be the same. I deal with it every day; when I hear a police siren and immediately think of my son, when I pull up next to a police car and think that that could have been him. I still stop as often as I can and tell the officers to have a good day and be careful.'' (David Haldane & Michael Wagner, For Some, a Reminder of Past Tragedy, L.A. Times, July 15, 1996, at A3)

Officer Wrede's killer was sentenced to death in 1984, and that conviction was affirmed by the California Supreme Court in 1989. Then in 2000—17 years after Ken Wrede's murder—a divided panel of the Ninth Circuit reversed the killer's death sentence. The

Ninth Circuit found that the killer's lawyer provided ineffective assistance of counsel at the penalty phase because he did not present additional evidence of the killer's abusive childhood and drug use.

At the time, Marianne Wrede noted, ''We thought we finally were close to getting this behind us. And now this.'' (Gordon Dillow, Long Wait for Justice Gets Worse, The Orange County Reg., May 11, 2000, at BO1) A California Deputy Attorney General denounced the decision, stating that ''it can always be suggested a jury should have heard something else in the penalty phase of a death penalty case.'' (Richard Winston, Reversal of Death Penalty in Officer's Killing Decried Courts, L.A. Times, May 10, 2000, at B3) West Covina Corporal Robert Tibbets, the original investigator at the scene of Wrede's murder, described the Ninth Circuit's decision as a ''miscarriage of justice.'' (Id.) He had promised Wrede's parents that he would accompany them to every court hearing for their son's killer. He made good on his promise, even 19 years later, when the killer was retried and again sentenced to death in 2002. But the Wredes now face another round of state and then federal appeals. At the retrial, Ken's father noted that ''my family and 1 had endured 19 years of trial, appeals, delays, causing us to relive the trauma of Kenny's death over and over again.'' The trial judge agreed. He stated, ''It is an obscenity to put anyone through this needlessly for 19 years. It is inexcusable for us in the system that we need to look at this case for 19 years to get it resolved. The system at some point in the line has become clogged and broken.'' (Larry Welborn, 19 Years and no Resolution for Parents, The Orange County Reg., Sept. 21, 2002)

Riverside Police Officers Dennis Doty and Philip Trust were killed by a man whom they attempted to arrest at his home on May 13, 1982. The man was in bed when the officers arrived and they permitted him to dress. The man then pulled out a gun that he had been sitting on and shot and killed both officers. He apparently sought revenge for injuries that he sustained when he was shot while committing a bank robbery. Officer Doty had served a tour of duty in Vietnam, where he had received a purple heart and bronze star. The State supreme court affirmed the killer's conviction and death sentence in 1991.

In 2002, 20 years after the murders, Federal district court reversed the killer's death sentence, finding that he had received ineffective assistance of counsel because he did not trust his lawyers. Local Superior Court judge Edward Webster denounced the decision, declaring that he was ''outraged by the entire federal process.'' He declared that ''this [decision] is just a product of judges'' personal opinions and philosophies opposing the death penalty.'' (Marlowe Churchill, Riverside Judge Takes Federal Court to Task, The Press-Enterprise, July 22, 1995, at BO1) The Riverside assistant police chief noted that the decision was particularly unfortunate for the officers' families: ''They lived this 20 years ago, and not to have closure on the trial process is particularly difficult'' (Mike Kataoka, Court Annuls Death Decree, The Press Enterprise, May 31, 2002, at BO1)

Los Angeles Police Detective Tom Williams was shot and killed by a man against whom he had testified several hours earlier in a robbery trial on October 31, 1985. Detective Williams was killed while picking up his son at a day-care center. A local newspaper gave the following account of the crime: ''With [his son] Ryan sitting beside him in the front seat of his truck, Williams, 42, saw the man in the ski mask, saw the automatic weapon pointing out of the driver's side window of the passing car. But he was helpless to do anything to protect himself. All he had time to do was scream for Ryan to get down, then cover the boy with his own body.'' (Dennis McCarthy, Youth Feels Need to Serve, L.A. Daily News, Aug. 24, 1993, at Nl) The Los Angeles Times gave the following account of testimony from the killer's trial:

> A seventh-grade pupil at a Canoga Park church school testified Wednesday that he saw 6–year-old Ryan Williams sitting on the ground crying moments after the boy's father, a Los Angeles police detective, had been gunned down in the street on Oct. 31,1985. Thomas C. Williams, 42, was picking up Ryan from school at 5:40 p.m. when he was struck by eight bullets from an automatic weapon. The detective died, slumped against the driver's side of his orange pickup truck. . . . [The pupil] said he looked toward Williams' truck, parked in front of the Faith Baptist Church school, and saw the windshield shatter. ''It split into pieces,'' [he] said. ''Then I ducked. I couldn't see anything. I got up because I heard some little boy cry. I walked over. He was sitting on the ground and he was crying and he had a bloody lip.'' (Lynn Steinberg, Boy Tells of Fatal Attack on Detective, L.A. Times, Feb. 11, 1998, at 12)

Detective Williams's killer remains on death row today, 20 years after committing this crime.

Garden Grove police officer Donald Reed was shot and killed while arresting a man at a bar on June 7, 1980. The killer appeared at first to cooperate with police, but then pulled a pistol from his jacket and began firing. One officer who comforted Reed as he lay on the ground describe the scene: ''I could see a sense of panic in Don's eyes. He said, 'I am not gonna make it' '' (Daniel Yi, Slain Officer's Family Testifies, L.A. Times, Feb. 9, 2000, at B1)

When Reed died, he had two toddler sons, ages 3 and 1½. Reed's killer was sentenced to death, but the sentence was reversed on appeal, and he was retried and sentenced to death again in 2000. Reed's sons were 22 and 21 by the time of the retrial. Still coping with the loss of their father, they chose not to attend the second trial. ''I was a mother, a father, I had to teach them everything,'' Reed's widow stated. (Id.) Of her husband, she simply noted, ''He was taken unnecessarily.'' (John McDonald, Officer's Widow Details Trauma, The Orange County Reg., Feb. 9, 2000, at B01) She also described the impact on her family of holding a second trial 20 years after the crime. ''We had all moved on, and then this came back and smacked us in the face. It really just tears you apart.'' (Daniel Yi, Slain Officer's Family Testifies, L.A. Times, Feb. 9, 2000, at B1)

Los Angeles Police Officer Paul Verna was gunned down during a traffic stop on June 2, 1983, by two men who earlier had committed a series of violent robberies. The first man shot Verna from inside the car, and the second then exited the vehicle and shot Verna five more times as he lay on the ground. Verna was survived by his wife and two young sons. Years later, the state supreme court reversed the death sentence of one of the killers. A new trial was held in 2000. At the first trial, Verna's widow described the devastating impact of the crime on her family. She spoke of how ''no one who has not done it can know how difficult it is to tell two young boys that the daddy they loved so much is gone.'' (Janet Rae-Dupree, 2 Sentenced to Die for Killing Policeman, L.A. Times, Sept. 21, 1985, at 6) A local newspaper gave the following accounts of the sentencing retrial:

> Vema's sons were young boys, 4 and 9, when he was murdered. This past week, they testified as young men. They told the jury that they did not have a lot of first-hand recollection of their dad. They did have the memories of stories from their mom and many others as to what their dad was like. Ryan [the younger son] spoke of sometimes feeling uneasy at being told how much he looked like and even acted like his dad, whom he does not remember. Sandy, Verna's widow, spoke of the challenge of properly raising two very young boys alone. (Jim Tatreau, Who Was Paul Verna? Murdered Officer Deeply Missed Hero, L.A. Daily News, Oct. 22, 2000, at V3)
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> ''At age 33, to be a widow—my roles in life completely changed. The very hardest part was when they were very young kids—when Ryan, who was 4 years old when his father died, would get hurt and would cry to his mother at bedtime, 'Mommy, I just want my daddy.' I couldn't give that to him, no matter how hard I tried. I could do everything else, but I couldn't give him his daddy.'' (Jason Kandel, Retrial Brings Victim's Family to Tears, L.A. Daily News, Sept. 27, 2000, at N4)
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> [Ryan] has only vague memories of his father's death, and then he could know his father only through various police memorials, plaques and family pictures. He has learned most of the details of the death from three weeks of testimony during the penalty retrial, and his killer's image won't disappear. ''My father didn't deserve to die in that manner, especially what was said to him and the gun being thrown on him when he's lying on the ground,'' he said in tears. ''My father wasn't around for a lot of things, a lot of special things in my life.'' (Id.)

Our society must do everything that it can to deter these types of crimes to ensure that punishment for those who commit them is swift and certain. For

all of these reasons, I urge my colleagues to support the Law-Enforcement Officers' Protection Act.

Mr. KYL. Mr. President, I rise today with my colleague, Senator CORNYN of Texas, to introduce the ''DNA Fingerprint Act of 2005.'' This act will allow State and Federal law enforcement to catch rapists, murderers, and other violent criminals whom it otherwise would be impossible to identify and arrest.

The principal provisions of the DNA Fingerprint Act make it easier to include and keep the DNA profiles of criminal arrestees in the National DNA Index System, where that profile can be compared to crime-scene evidence. By removing current barriers to maintaining data from criminal arrestees, the act will allow the creation of a comprehensive, robust database that will make it possible to catch serial rapists and murderers before they commit more crimes.

The impact this act will have on preventing rape and other violent crimes is not merely speculative. We know from real life examples that an all-arrestee database can prevent many future offenses. In March of this year, the city of Chicago produced a case study of eight serial killers in that city who would have been caught after their first offense—rather than after their fourth or tenth—if an all-arrestee database had been in place. This study is included in the record at the conclusion of my remarks.

The first example that the Chicago study cites involves serial rapist and murderer Andre Crawford. In March 1993, Crawford was arrested for felony theft. Under the DNA Fingerprint Act, the state of Illinois would have been able to take a DNA sample from Crawford at that time and upload and keep that sample in NDIS, the national DNA database. But at that time—and still today—Federal law makes it difficult to upload an arrestee's profiles to NDIS, and bars States from keeping that profile in NDIS if the arrestee is not later convicted of a criminal offense. As a result, Crawford's DNA profile was not collected and it was not added to NDIS. And as a result, when Crawford murdered a 37-year-old woman on September 21, 1993, although DNA evidence was recovered from the crime scene, Crawford could not be identified as the perpetrator. And as a result, Crawford went on to commit many more rapes and murders.

On December 21, 1994, a 24-year-old woman was found murdered in an abandoned building on the 800 block of West 50th place in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the September 1993 murder, and this December 1994 murder could have been prevented.

On April 3, 1995, a 36-year-old woman was found murdered in an abandoned house on the 5000 block of South Carpenter Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the two earlier murders that he had committed, and this April 1995 muurder could have been prevented.

On July 23, 1997, a 27-year-old woman was found murdered in a closet of an abandoned house on the 900 block of West 51st Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the three earlier murders that he had committed, and this July 1997 murder could have been prevented.

On December 27, 1997, a 42-year-old woman was raped in Chicago. As she walked down the street, a man approached her from behind, put a knife to her head, dragged her into an abandoned building on the 5100 block of South Peoria Street, and beat and raped her. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the four earlier murders that he had committed, and this December 1997 rape could have been prevented.

In June 1998, a 31-year-old woman was found murdered in an abandoned building on the 5000 block of South May Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the four earlier murders and one rape that he had committed, and this June 1998 murder could have been prevented.

On August 13, 1998, a 44-year-old woman was found murdered in an abandoned house on the 900 block of West 52nd Street. Her clothes were found in the alley. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the five earlier murders and one rape that he had committed, and this August 1998 murder could have been prevented.

Also on August 13, 1998, a 32-year-old woman was found murdered in the attic of a house on the 5200 block of South Marshfield. Her body was decomposed, but DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the six earlier murders and one rape that he had committed, and this additional murder could have been prevented.

On December 8, 1998, a 35-year-old woman was found murdered in a building on the 1200 block of West 52nd Street. She had rope marks around her neck and injuries to her face. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the seven earlier murders and one rape that he had committed, and this December 1998 murder could have been prevented.

On February 2, 1999, a 35-year-old woman was found murdered on the 1300 block of West 51st Street. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the eight earlier murders and one rape that he had committed, and this February 1999 murder could have been prevented.

On April 21, 1999, a 44-year-old woman was found murdered in the upstairs of an abandoned house on the 5000 block of South Justine Street. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the nine earlier murders and one rape that he had committed, and this April 1999 murder could have been prevented.

And on June 20, 1999, a 41-year-old woman was found murdered in the attic of an abandoned building on the 1500 block of West 51st Street. DNA evidence was recovered from blood on a nearby wall, indicating a struggle. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford's profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the ten earlier murders and one rape that he had committed, and this additional murder could have been prevented.

As the city of Chicago case study concludes:

> In January 2000, Andre Crawford was charged with 11 murders and 1 Aggravated Criminal Sexual Assault. If his DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened.

The city of Chicago study goes on to discuss the cases of 7 other serial rapists and murders from that city. Collectively, together with Andre Crawford, these 8 serial rapists and

killers represent 22 murders and 30 rapes that could have been prevented had an all-arrestee database been in place.

The DNA Fingerprint Act eliminates current federal statutory restrictions that prevent states from adding and keeping arresttee profiles in NDIS. In effect, the Act would make it possible to build a comprehensive, robust national all-arrestee DNA database.

Here is how the DNA Fingerprint Act works: First, under current Federal law, a DNA profile from an arrestee cannot be uploaded to NDIS until the arrestee is charged in an indictment or information. Thus today, even an arrestee charged in a pleading cannot have his DNA uploaded to the national index. The act eliminates this restriction, allowing arrestees to be included as soon as they are arrested. It also eliminates a statutory restriction that bars inclusion of profiles from suspects who provide so-called ''exoneration'' samples. The act recognizes that criminal suspects have no legitimate interest in evading identification for crimes that they have committed.

Second, the act requires an arrestee to take the initiative to opt out of NDIS if charges against him have been dismissed or he has been acquitted, and he does not want his DNA profile compared to future crime scene evidence. Current law places the burden of determining who may be removed from the index on the administrator of the DNA database, thus requiring the administrator to track the progress of individual criminal cases. This bureaucratic burden discourages states from creating and maintaining comprehensive, all-arrestee DNA databases. It also effectively precludes the creation of a genuine national all-arrestee database. In effect, only convicts' DNA profiles can be kept in the database over the long term. The act would allow arrestee profiles to be kept in the database as well.

Third, the DNA Fingerprint Act would allow expanded use of CODIS grants. Congress currently appropriates funds for use by states to expand their DNA databases. Current law restricts the use of these grants, however, to only building databases of convicted felons. This bill expands this authorization to allow use of these funds to build a database of all DNA samples collected under lawful authority—including samples taken from arrestees.

Fourth, the DNA Fingerprint Act allows the Federal Government to take and keep DNA samples from arrestees. The act gives the Attorney-General the authority to develop regulations allowing collection of DNA profiles from federal arrestees or detainees. The authority to issue such regulations would give the Attorney General the flexibility needed to respond to new legal developments and changes in technology.

And finally, the act tolls the statute of limitations for Federal sex offenses. Current law generally tolls the statute of limitations for felony cases in which the perpetrator is implicated in the offense through DNA testing. The one exception to this tolling is the sexual-abuse offenses in chapter 109A of title 18. When Congress adopted general tolling, it left out chapter 109A, apparently because those crimes already are subject to the use of ''John Doe'' indictments to charge unidentified perpetrators. The Justice Department has made clear, however, that John Doe indictments are ''not an adequate substitute for the applicability of [tolling].'' The Department has criticized the exception in current law as ''work[ing] against the effective prosecution of rapes and other serious sexual assaults under chapter 109A,'' noting that it makes ''the statute of limitation rules for such offenses more restrictive than those for all other Federal offenses in cases involving DNA identification.'' The DNA Fingerprint Act corrects this anomaly by allowing tolling for chapter 109A offenses.

Further evidence of the potential effectiveness of a comprehensive, robust DNA database is available from the recent experience of Great Britain. The British have taken the lead in using DNA to solve crimes, creating a database that now includes 2,000,000 profiles. Their database has now reached the critical mass where it is big enough to serve as a highly effective tool for solving crimes. In the U.K., DNA from crime scenes produces a match to the DNA database in 40 percent of all cases. This amounted to 58,176 cold hits in the United Kingdom 2001. (See generally ''The Application of DNA Technology in England and Wales,'' a study commissioned by the National Institute of Justice.) A broad DNA database works. The same tool should be made available in the United States.

Some critics of DNA databasing argue that a comprehensive database would violate criminal suspects' privacy rights. This is simply untrue. The sample of DNA that is kept in NDIS is what is called ''junk DNA''—it is impossible to determine anything medically sensitive from this DNA. For example, this DNA does not allow the tester to determine if the donor is susceptible to particular diseases. The Justice Department addressed this issue in its statement of views on S. 1700, a DNA bill that was introduced in the 108th Congress:

[T]here [are no] legitimate privacy concerns that require the retention or expansion of these [burdensome expungement provisions]. The DNA identification system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement identification purposes. See 42 U.S.C. 14132(b)–(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any traits or characteristics of individuals. Hence, the databased information cannot be used to discern, for example, anything about an individual's genetic illnesses, disorders, or dispositions. Rather, by design, the information the system retains in the databased DNA profiles is the equivalent of a ''genetic fingerprint'' that uniquely identifies an individual, but does not disclose other facts about him.

Elsewhere in its Views Letter, the Justice Department also explained why the restrictive expungement provisions in current law are unnecessary and contrary to sound public policy. The letter noted that the FBI maintains a database of fingerprints of arrestees—without regard to whether the arrestee later was acquitted or convicted. The letter states, ''With respect to the . . . exclusion of DNA profiles of unindicted arrestees, it should be noted by way of comparison that there is no Federal policy that bars States from including fingerprints of arrestees in State and Federal law enforcement databases prior to indictment.'' The Justice Department also pointed out that ''[t]here is no reason to have a . . . Federal policy mandating expungement for DNA information. If the person whose DNA it is does not commit other crimes, then the information simply remains in a secure database and there is no adverse effect on his life. But if he commits a murder, rape, or other serious crime, and DNA matching can identify him as the perpetrator, then it is good that the information was retained.''

From the Chicago study—which examines the experience of just one American city over recent years—we know that an all-arrestee database can and inevitably will make the critical difference in solving and preventing violent sex offenses. From the British experience, we know that a comprehensive database can be a highly effective tool in solving crimes. And we know that DNA databasing does not violate the right to privacy. I urge the Congress to enact the DNA Fingerprint Act—before another preventable sex crime occurs.

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

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

CASE STUDY OF 8 SERIAL KILLERS AND RAPISTS: 60 VIOLENT CRIMES COULD HAVE BEEN PREVENTED, INCLUDING 22 MURDERS AND 30 RAPES, CITY OF CHICAGO, MARCH 2005

If Illinois collected DNA from 8 serial killers and rapists during any of their felony arrests, over 60 serious violent crimes would never have occurred. These include: 22 murders—all female victims ranging from 24 to 44 years old; 30 rapes—all victims ranging from 15 to 65 years old; attempted rapes; and aggravated kidnapping.

Offender Andre Crawford, 37 years old: 10 preventable murders and 1 preventable rape

Andre Crawford has been charged with eleven murders and one attempted murder/aggravated criminal sexual assault.

In March 1993, Andre Crawford was arrested for Felony Theft. If Illinois required him to give a DNA sample during that felony arrest, a DNA match could have been obtained with the DNA evidence recovered from his first murder, thereby identifying him as the offender and the subsequent 10 murders and one attempted murder/criminal sexual assault would have been prevented.

Timeline of Events: On March 6, 1993, Andre Crawford was arrested for Felony Theft.

On September 21, 1993, a 37-year-old woman was found murdered. Her body was discovered in a vacant factory lot on the 700 block of West 50th Street. She had blunt trauma to her head. DNA evidence was recovered.

The following are 10 preventable murders & 1 preventable attempted murder/rape which would not have occurred had Crawford's DNA sample been taken on March 6, 1993:

On December 21, 1994, a 24-year-old woman was found murdered. Her body was found in an abandoned building on the 800 block of West 50th Place. DNA evidence was recovered.

On April 3, 1995, a 36-year-old woman was found murdered. Her body was discovered in an abandoned house on the 5000 block of South Carpenter. DNA evidence was recovered.

On May 3, 1995, Andre Crawford was arrested for Attempted Criminal Sexual Abuse (Felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On July 23, 1997, a 27-year-old woman was found murdered. Her body was discovered in a closet of an abandoned house on the 900 block of West 51st Street. DNA evidence was recovered.

On December 27, 1997, a 42-year-old woman was raped. As she walked, an offender approached her from behind, placed a knife to her head, dragged her into an abandoned building on the 5100 block of South Peoria, then beat and raped her. DNA evidence was recovered.

In January 1998, Andre Crawford was arrested for Possession of a Controlled Substance (Felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

In June 1998, a 31-year-old woman was found murdered. Her body was discovered in an abandoned building on the 5000 block of South May Street.

On August 13, 1998, a 44-year-old woman was found murdered. A rehabber discovered her body in the kitchen of an abandoned house on the 900 block of West 52nd Street. Her clothes were found in the alley. DNA evidence was recovered.

On August 13, 1998, a 32-year-old woman was found murdered. A real estate agent discovered her decomposed body lying on the floor in the attic on the 5200 block of South Marshfield. DNA evidence was recovered.

On December 8, 1998, a 35-year-old woman was found murdered. A rehabber discovered her body with her pants one around her ankle and the other completely off in a building on the 1200 block of West 52nd Street. She had rope marks around her neck and injuries to her face. DNA evidence was recovered.

On February 2, 1999, a 35-year-old woman was found murdered. Her body was discovered on the 1300 block of West 51st Street. DNA evidence was recovered.

On April 21, 1999, a 44-year-old woman was found murdered. Her body was discovered in the upstairs of an abandoned house on the 5000 block of South Justine. DNA evidence was recovered.

On June 20, 1999, a 41-year old woman was found murdered. Her body was found in the attic of an abandoned building on the 1500 block of West 51st Street. DNA evidence was recovered from blood on the wall which indicated a struggle.

In November 1999, Andre Crawford was arrested for possession of a controlled substance (felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

In January 2000, Andre Crawford was charged with 11 murders and 1 aggravated criminal sexual assault. If his DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened.

Offender Brandon Harris, 18 years old: 4 preventable rapes and 1 preventable kidnapping

Brandon Harris was convicted of five aggravated criminal sexual assaults and one aggravated kidnapping/attempted rape.

In August 2000, Brandon Harris was arrested with a felony charge. If Illinois required him to give a DNA sample after that arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent four rapes and one attempt rape/armed robbery/aggravated kidnapping would have been prevented.

Timeline of events: On December 2, 1999, a 17-year old girl was raped. As she was waiting for a bus, an offender displayed a knife, forced her to an abandoned garage on the 100 block of South 83rd Street and raped her.

On August 25, 2000, Brandon Harris was arrested for aggravated criminal sexual assault.

On October 29, 2000, Brandon Harris was arrested for aggravated criminal sexual assault.

The following are 4 preventable rapes and 1 attempted rape/armed robbery/aggravated kidnapping which would not have occurred had Harris's DNA sample been taken on August 25, 2000.

On November 26, 2000, a 25-year old woman was raped. As she walked to work, an offender approached her, displayed a handgun, forced her into an abandoned house on the 7900 block of South Yale and raped her. DNA evidence was recovered.

On November 29, 2000, a 19-year old girl was robbed and kidnapped. As she attempted to exit an L-Train, an offender displayed a handgun and demanded her to stay on the train. The offender ordered the victim to exit the train at a later stop, took her to an abandoned basement on the 200 block of West 80th Street where he made her take her clothes off and took her money.

On December 7, 2000, Brandon Harris was arrested for robbery—armed with a firearm & UUW (felony). However, Brandon was not convicted until February 5, 2001 and sentenced to home confinement. Six days later, he rapes again.

On February 11, 2001, a 22-year old woman was raped. As she was waiting for a bus, an offender pulled up in a vehicle, ordered her into the car at gunpoint and raped her on the 8200 block of South Harvard. DNA evidence was recovered.

On February 28, 2001, a 15-year old girl was raped. She exited an L-station and began to walk home when an offender walked up behind her, stuck a piece of glass to her neck, forced her to a basement stairwell on the 8000 block of South Princeton and raped her. DNA evidence was recovered.

On May 19, 2001, a 17-year old girl was raped. As she waited for a bus, an offender approached her, led her at gunpoint to a backyard on the 8100 South Harvard and raped her.

Brandon Harris was convicted of 5 aggravated criminal sexual assaults and 1 attempt aggravated criminal sexual assault. If his DNA sample had been taken on August 25, 2000, the subsequent 4 rapes and 1 attempt rape would not have happened.

Offender Geoffrey T. Griffin, 31 years old: 8 preventable murders and 1 preventable rape

Geoffrey Griffin has been charged with eight murders and one aggravated criminal sexual assault.

In December 1993, Geoffrey Griffin was arrested for possession of a controlled substance (felony). If Illinois required him to give a DNA sample after that felony arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent eight murders, one rape and one attempted rape would have been prevented.

Timeline of Events: On August 26, 1995, Geoffrey Griffin was arrested for possession of a controlled substance.

On July 10, 1998, a 37-year-old woman was raped. She was forced into an abandoned building on the 6700 block of South Halsted. After being raped, she was beat into unconsciousness and left to die. DNA evidence was recovered from the sexual assault kit.

The following are 8 preventable murders, 1 rape and 1 attempted rape which would not have occurred had Griffin's DNA sample been taken on August 26, 1995.

On July 11, 1998, a 36-year-old woman was found murdered. She was found in the rear yard on the 7400 block of South Halsted, naked from the waist down. She suffered blunt trauma to the face and head. DNA evidence was recovered from the sexual assault kit.

On February 7, 1999, a 22-year-old woman was raped. She was attacked in an abandoned building on the 10900 block of South Edbrooke. The offender raped her, then beat her in the head with a brick and burned her eyes. DNA evidence was recovered from the sexual assault kit.

On May 2, 2000, a 33-year-old woman was found murdered. She was raped, and then strangled to death on the 15800 block of South Park. She was found naked. DNA evidence was recovered from the victim's fingernail clippings.

On May 12, 2000, a 32-year-old woman was found murdered. She was found naked in an abandoned building on the 11800 block of South Yale. She was strangled to death. DNA evidence of the assailant was recovered from the sexual assault kit.

On May 17, 2000, a 32-year-old woman was found murdered. Her body was discovered in an abandoned building on the 11900 block of South LaSalle. The murderer's jacket had the victim's blood stains on it. DNA evidence was recovered.

On June 13, 2000, a 21-year-old woman was attacked. As she was in an abandoned building on the 11900 block of South Wallace, an offender attempted to rape her. She was struck with a knife, but escaped.

On June 16, 2000, a 29-year-old woman was found murdered. Her body was discovered in an abandoned building on the 10700 block of South Michigan. DNA of the assailant was recovered from the victim's fingernails. Later matched.

On June 19, 2000, a 47-year-old woman was found murdered. Her body was found naked from her waist down and the cause of death was strangulation on the 20 block of East 113th Place (occurrence May 25, 2000). DNA of the assailant was recovered from the victim's fingernails.

On June 22, 2000, a 39-year-old woman was found murdered. Her body was found in an abandoned house on the 200 block of West 112th Place (occurrence June 13, 2000). She was naked from the waist down and the cause of death was strangulation. DNA evidence was recovered. The murderer's jacket had the victim's blood on it.

On June 27, 2000, a 44-year-old woman was found murdered. She was strangled to death. Her body was found naked from the waist down on the 11000 block of South Edbrooke (occurrence June 13, 2000). The murderer's jacket had the victim's blood on it.

Geoffrey Griffin was arrested on June 17, 2000. He has subsequently been charged with eight murders and 1 aggravated criminal sexual assault. If his DNA sample had been

taken on August 26, 1995, the 8 murders, 1 rape and 1 attempted rape would not have happened.

Offender Mario Villa, 37 years old: 8 preventable rapes or attempted rapes

Mario Villa has been charged with four rapes, linked by DNA to two other rapes, and a main suspect in an additional rape and two attempted rapes.

In February 1999, Mario Villa was arrested for felony burglary. If Illinois required him to give a DNA sample after that arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent six rapes and two attempted rapes would have been prevented.

Timeline of Events: On February 6, 1999, Mario Villa was arrested for burglary (felony).

On July 5, 1999, a 16-year-old girl was raped. As she slept in her apartment on the 1300 block of North Dean Street, an offender entered her apartment and raped her. He ordered her to take a shower after raping her. DNA evidence was recovered from the criminal sexual assault kit.

The following are 8 preventable rapes or attempted rapes which would not have occurred had Villa's DNA sample been taken on February 6, 1999.

On May 26, 2002, a 32-year-old woman was raped. As she slept in her apartment on the 1300 block of South Greenview, an offender entered her residence, raped her and then ordered her to take a shower. DNA evidence of the assailant was recovered from the criminal sexual assault kit.

On March 17, 2003, a 47-year-old woman was raped. As she sat in her car at a forest preserve in Lisle, Illinois, the offender ordered her into the woods and raped her. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On June 8, 2003, a 19-year-old woman was attacked in her apartment. As she slept in her apartment on the 1800 block of North Halsted, an offender entered her residence and attempted to rape her. The victim yelled, ''Fire, fire'' and the offender fled.

On August 22, 2003, a woman was raped in Kenosha, Wisconsin. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On October 4, 2003, a 29-year-old woman was attacked at home on the 1200 block of West Byron at 3 a.m. in the morning, an offender entered her apartment and attempted to rape her.

On October 15, 2003, a 24-year-old woman was raped. As she slept in her apartment on the 3500 block of West Greenview, the offender entered her residence, placed a pillow over her face and raped her. Offender ordered her to take a shower after raping her.

On December 20, 2003, a 40-year-old woman was raped. As she slept in her apartment at 1300 of West Ohio, an offender entered her residence, told her not to say anything, placed a pillow over her mouth and raped her. Offender ordered her to take shower after raping her.

On February 7, 2004, a 23-year-old woman was raped. As she slept in her apartment, an offender entered her residence on the 2000 block of North Cleveland and raped her. The offender ordered her to take a shower after raping her.

On March 19, 2004, police officers obtained a search warrant and swabbed a DNA sample from Mario Villa as he appeared in court on an unrelated criminal trespassing charge. Subsequently, Mario Villa was charged with 4 aggravated criminal sexual assaults, linked by DNA or similarities in the other crimes. If his DNA sample had been taken on February 6, 1999, the subsequent 6 rapes and 2 attempted rapes would not have happened.

Offender Bernard Middleton, 55 years old: 1 preventable murder and 2 preventable rapes

Bernard Middleton has been charged with one murder and three aggravated criminal sexual assaults.

Bernard Middleton was arrested for felonies in 1987 and 1993, if Illinois required him to give a DNA sample after either arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent murder and two rapes would have been prevented.

Timeline of Events: On January 17, 1987, Bernard Middleton was arrested for aggravated battery.

On May 6, 1993, Bernard Middleton was arrested for felony theft.

On September 25, 1995, a 22-year-old woman was raped. As she waited for a bus, an offender placed a knife to her head, led her to an isolated area, beat and raped her on the 600 block of West Garfield. DNA evidence was recovered.

The following is 1 preventable murder and 2 preventable rapes which would not have occurred had Middleton's DNA sample been taken on May 6, 1993.

On October 16, 1995, a 32-year-old woman was found murdered. She was lured into a stairwell at Hope Academy on the 5500 block of South Lowe, raped, and then murdered. Her body was found in the stairwell. DNA evidence was recovered from the criminal sexual assault kit.

On May 28, 1997, Bernard Middleton was arrested for felony theft. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On July 25, 1997, a 34-year-old woman was raped. The offender placed a knife against her head, told that she would be killed and then raped her on the 5500 block of South Calumet. DNA evidence was recovered.

On September 14, 1998, Bernard Middleton was arrested for felony theft. Convicted on October 9, 1998 and sentenced to probation for 1 year. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On October 31, 1998, a 48-year-old woman was raped. As she walked down the street, an offender grabbed her from behind, placed a knife against her, forced her to the alley and raped her on the 1500 Block of North Claremont Avenue. DNA evidence was recovered.

On November 12, 2001, Bernard Middleton was arrested for possession of a controlled substance. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On August 8, 2002, Bernard Middleton was arrested for felony retail theft. Convicted and sentence to 20 months. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On May 1, 2003, Bernard Middleton was charged with the aforementioned murder and three rapes. While Bernard Middleton was in prison for a retail theft conviction in 2002, his DNA sample was entered into the DNA database and his sample matched the evidence recovered from the previous unresolved cases. If his DNA sample had been taken on May 6, 1993, the murder and 2 rapes would not have happened.

Offender Ronald Macon, 35 years old: 2 preventable murders and 1 preventable criminal sexual assault

In 2003, Ronald Macon was convicted of three murders and one criminal sexual assault.

Ronald Macon was arrested for a felony charge on three separate occasions in 1998. If Illinois required him to give a DNA sample after his first felony arrest in 1998, a DNA match could have been obtained with the DNA evidence recovered from his first murder, thereby identifying him as the offender and the subsequent two murders and one criminal sexual assault would have been prevented.

Timeline of Events: On January 13, 1998, Ronald Macon was arrested for retail theft (felony).

On July 20, 1998, Ronald Macon was arrested for defacing property (felony).

On September 8, 1998, Ronald Macon was arrested for retail theft (felony).

On February 18, 1999, a 43-year-old woman was found murdered. Her body was discovered on the 100 block of East 45th Street. DNA evidence was recovered.

The following are 2 preventable murders and 1 preventable criminal sexual assault which would not have occurred had Macon's DNA sample been taken on January 13, 1998.

On April 4, 1999, a 35-year-old woman was found murdered. She was choked and beaten to death with an electrical box on the 5900 block of South Damen Ave. DNA was evidence recovered.

On June 21, 1999, a woman was found murdered. She was choked, raped; her hands and feet were bound with shoelaces, and then strangled to death with a strap from a bag. Her body was discovered on the 400 block of East 69th Street. DNA evidence was recovered.

On August 9, 1999, Ronald Macon was arrested for criminal sexual assault of a 65-year-old woman. Ronald Macon placed a knife to the victim's neck and demanded her jewelry and money. Ronald Macon then wrapped a cord around her hands, led her into the bedroom and raped her.

On September 11, 2003, Ronald Macon was sentenced for life in prison for killing the three women and sentenced to 30 years for raping a 65-year-old woman. If his DNA sample had been taken on January 13, 1998, 2 murders and 1 rape would not have happened.

[The remainder of the study describes 11 preventable rapes committed by offenders Ronald Harris and Arto Jones, and 5 preventable rapes committed by offender Nolan Watson, all of which could have been prevented if Chicago had collected DNA from all felony arrestees.]

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 1607. A bill to amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board; to the Committee on Commerce, Science, and Transportation.

Mr LAUTENBERG. Mr. President, I rise to introduce legislation to address a serious problem in New Jersey and across the nation—the unregulated sorting and processing of garbage at rail facilities in our communities.

A conflict in Federal laws and policy has resulted in certain solid waste-handling facilities located on railroad property being unregulated. Environmental laws such as the Solid Waste Disposal Act should apply to the operation of these facilities. However, a broad-reaching Federal railroad law forbids environmental regulatory agencies from overseeing the safe handling of trash or solid waste at these sites.

These unintended consequences require our attention, and are the reason

for the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005.

The Federal railroad law in question was enacted most recently in the Interstate Commerce Commission Termination Act of 1995 to protect the operation of interstate rail service. The law gives 'exclusive' jurisdiction over rail transportation—and activities incident to such transportation—to the Federal Surface Transportation Board.

I realize this law is necessary for the efficient operation of commerce in our modern economy. I serve on the Committee on Commerce, Science and Transportation, as well as the Subcommittee on Merchant Marine and Surface Transportation, which oversees the Surface Transportation Board and considers nominations of its members. The board's reputation and expertise in rail regulation is second to none.

However, the Board is limited to only a passive role in ensuring that rail facilities are operated with minimal detriment to the public health and safety. These sites require active environmental regulation, just like other solid waste handling facilities.

The recent proliferation of solid waste rail transfer facilities has affected the ability of State and local governments to engage in long-term waste management planning. These agencies also are responsible for responding to accidents and incidents occurring at these facilities.

Although transporting solid waste by rail can reduce the number of trucks hauling solid waste on public roads, handling this waste without careful planning and management presents a danger to human health and the environment.

These transfer operations create thick dust, which is potentially hazardous and is breathed in by local residents and business owners.

Some transfer facilities don't have proper drainage on site, leading to the potential contamination of surface and groundwater and nearby wetlands.

In addition, these facilities raise serious concerns about the safety of their workers and the exemptions they claim from strong State worker protection laws.

As a result of these chilling reports, I asked state agencies in New Jersey, railroads, and other interested groups to provide input into possible legislation to address this problem.

Many experts in New Jersey, including the Department of Environmental Protection, the Meadowlands Commission, the Pinelands Commission, and the Rutgers Environmental Law Clinic, provided excellent suggestions. I look forward to working with them throughout the process to find a solution to this problem.

I have also met with railroad interests, who are concerned about their ability to continue hauling solid waste. Some operators of these rail facilities have voluntarily complied with State environmental laws, even though they could claim that Federal railroad law preempts any enforcement action States could take. I would like to thank members of the solid waste handling industry for their concern and input as well.

One reason this legislation is needed is that the Surface Transportation Board has never clarified whether it even has jurisdiction over the processing and sorting of solid waste at a rail facility.

This bill would make it clear that Congress' intent was not to subvert the policies of the Solid Waste Disposal Act and other environmental laws covering the handling of garbage.

The bill will clarify the intent of Congress in passing these two important laws, and ensure that they work together to provide for a robust, environmentally responsible rail system.

Some have suggested that perhaps this clarification should not be limited to the processing and sorting of solid waste. But these are the activities that require the greatest environmental oversight, because they pose the greatest environmental risk.

Many towns across the country are beginning to understand the problem of having an unregulated polluting neighbor, and having nowhere to turn for help. Many influential organizations support this effort, including: United States Conference of Mayors, National Governors Association, Solid Waste Association of North America, Mass Municipal Association, National Solid Wastes Management Association, Integrated Waste Services Association, and Construction Material Recyclers Association.

These garbage transfer facilities should not be able to circumvent and ignore our environmental and. safety laws. I realize that the Surface Transportation Board must have broad jurisdiction over rail transportation, but that jurisdiction should not be interpreted in a way that puts our environment at risk.

Railroading has a bright future in New Jersey and throughout our country, as freight loads have increased to levels we have not seen in some time. I have fought for many years to ensure that our freight transportation system, the backbone of our national economy, continues to flourish. But we need this legislation to ensure that these solid waste rail transfer facilities are run in the same environmentally responsible manner as other solid waste sites.

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. 1607

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 ''Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005''.

SEC. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DISPOSAL FROM THE JURISDICTION OF THE BOARD.

Section 10501 of title 49, United States Code, is amended—

(1) in subsection (b)(2), by inserting ''except solid waste management facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)),'' after ''facilities,''; and

(2) in subsection (c)(2)—

(A) by striking ''over mass'' and inserting the following: ''over—

''(A) mass''; and

(B) by striking the period at the end and inserting the following: ''; or

''(B) the processing or sorting of solid waste.''.

Mr. CORZINE. Mr. President, I rise in support of legislation being introduced today by my colleague from New Jersey, Senator LAUTENBERG. This legislation, the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005, would deal with a growing problem in my state: the problem of railroads avoiding strict environmental standards by constructing waste transfer facilities next to rail lines. I am proud to cosponsor this important legislation.

I first became aware of this problem when constituents contacted me about a waste transfer facility proposed to be built by a railroad in Mullica Township, New Jersey. There could not be a worse place for such a facility. Mullica Township is located in the Pinelands National Reserve, which encompasses more than 1.1 million acres of ecologically sensitive land. The Pinelands was designated as our nation's first national reserve in order to protect its streams, bogs,and cedar and hardwood swamps, as well as the many species that live there. Yet many of these protections could be circumvented if this proposed facility is built. The railroad argues that federal statute provides a shield from all environmental standards for any trash facility built adjacent to a rail line. This same argument has been used by railroads in the case of 5 similar facilities that are already in operation in North Bergen. These facilities lie near New Jersey's Meadowlands, another environmental treasure.

The statute being used by the railroads establishes the Surface Transportation Board, STB, as the reulatory agency for the nation's railroads, title 49 of the United States Code. Under section 10501, the STB has exclusive jurisdiction over the ''construction, acquisition, or operation'' of ''facilities'' located adjacent to a rail line. The railroads argue that facility means any facility, including a trash transfer station. They argue that because of this statute, federal law preempts all other state and local protections.

I cannot believe that Congress intended these types of facilities to be exempt from State and local environmental standards. The risk to the surrounding communities from the air pollution and groundwater contamination that could occur when open rail cars carrying solid waste are allowed

to load and off-load is too great. However, I believe that we must take steps to clarify the law's intent. The ''Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005 will do this. The Act makes it clear that all state and local environmental laws and restrictions apply to these facilities.

This is a commonsense measure that insures that the public remains fully involved in decisions relating to these facilities, regardless of where they are built. I urge its enactment.

By Mr. SMITH (for himself, Mr. MCCAIN, Mr. INOUYE, and Mr. NELSON of Florida):

S. 1608. A bill to enhance Federal Trade Commission enforcement against illegal spam, spyware. and cross-border fraud and deception, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senators MCCAIN, INOUYE, and NELSON of Florida to introduce the ''Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Borders Act of 2005'' or the ''U.S. SAFE WEB Act of 2005''.

The Federal Trade Commission has a constitutionally mandated responsibility to protect the American consumer from all types of fraud and deception. Today, the American consumer is increasingly falling prey to a new type of fraud unknown just a few years ago. The US SAFE WEB Act of 2005 will take the important steps necessary to help combat this disturbing and growing trend.

The rise in the use of the internet has provided the American consumer with innumerable benefits. The global market place in which we live knows no borders, and the FTC must be provided with all the tools necessary to fulfill its duty in this type of environment.

Using internet and long-distance telephone technology, unscrupulous businesses are increasingly able to victimize consumers in ways not previously imagined. Deceptive spammers can easily hide their identities, forge the electronic path of their email messages, and send messages from anywhere in the world to anyone in the world. These businesses can strike quickly on a global scale, victimize thousands of consumers, and disappear nearly without a trace—along with their ill-gotten gains.

There are dangers that come into U.S. homes through some of the harmful online networks, including some peer-to-peer networks, who purposefully locate outside the United States to avoid our Federal laws and put American families at risk.

Cross-Border fraud, as it is known, is becoming an increasingly common problem facing the American consumer and the FTC. In 1995, fewer than 1 percent of all consumer fraud complaints received by the FTC were directed at foreign entities. In less than a decade, the percentage had grown to 16 percent. In 2004 alone, the FTC received more than 47,000 complaints by U.S. consumers against foreign companies complaining about transactions involving more that $92 million. In the past three years, over 100,000 consumers logged cross-border fraud complaints with the FTC.

Remarkably, these high numbers likely understate the problem. Consumers who reported instances of cross-border fraud only did so when they knew that they were complaining about foreign entities. In many more instances, consumers do not know that their complaints are against foreign entities. Fully one-third of all complaints to the FTC do not reveal the location of the entity being complained about.

The Federal Trade Commission also testified at a recent Aging Committee hearing on elder fraud that many sweepstakes and lottery scams originate in Canada, and consumer fraud has become increasingly cross-border in nature.

The US SAFE WEB Act helps to address the challenges posed by globalization of fraudulent, deceptive, and unfair practices.

Our bill draws on established models for international cooperation pioneered by agencies such as the Securities and Exchange Commission and the Commodities Futures Trading Commission. The FTC faces significant challenges in battling sophisticated cross-border schemes. Just as improved authority to act in cross-border cases gave the SEC and CFTC important new tools to fulfill their missions, enactment of the US SAFE WEB Act would help the FTC fulfill its mission of protecting and assisting U.S. consumers. The Act will substantially improve the FTC's ability to meet the challenges posed by international investigations and litigation.

The US SAFE WEB Act will provide the FTC with important new tools in many important areas. The provisions contained within the Act are needed to help the FTC to protect consumers from cross-border fraud and deception, and particularly to fight spam, spyware, and Internet fraud and deception.

Among key provisions within the bill are those that broaden reciprocal information sharing, expand investigative cooperation between U.S. and foreign law enforcement agencies, increase information from foreign sources, and enhance the confidentiality of FTC investigations.

These provisions are needed to allow the FTC to share important information with foreign agencies so that they can halt fraud, deception, spam, and spyware targeting U.S. citizens, and for the FTC to obtain, reciprocally, foreign information needed to halt these cnmes.

Furthermore, this legislation enhances the FTC's ability to obtain consumer redress in cross-border cases. The US SAFE WEB Act would allow the FTC to target more resources toward foreign litigation to facilitate recovery of offshore assets to redress U.S. consumers.

In the 108th Congress, Senator MCCAIN and I introduced this legislation and it quickly passed the Senate by unanimous consent. Unfortunately, the bill was not signed into law before Congress adjourned. I urge my colleagues to support quick passage of this very important legislation this year.

The American consumer is far too vulnerable to this growing type of fraud and deception. Enactment of the US SAFE WEB Act would help the FTC fulfill its mission of protecting and assisting U.S. consumers.

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. 1608

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2005'' or the ''U.S. SAFE WEB Act of 2005''.

(b) FINDINGS.—The Congress finds the following:

(1) The Federal Trade Commission protects consumers from fraud and deception. Cross-border fraud and deception are growing international problems that affect American consumers and businesses.

(2) The development of the Internet and improvements in telecommunications technologies have brought significant benefits to consumers. At the same time, they have also provided unprecedented opportunities for those engaged in fraud and deception to establish operations in one country and victimize a large number of consumers in other countries.

(3) An increasing number of consumer complaints collected in the Consumer Sentinel database maintained by the Commission, and an increasing number of cases brought by the Commission, involve foreign consumers, foreign businesses or individuals, or assets or evidence located outside the United States.

(4) The Commission has legal authority to remedy law violations involving domestic and foreign wrongdoers, pursuant to the Federal Trade Commission Act. The Commission's ability to obtain effective relief using this authority, however, may face practical impediments when wrongdoers, victims, other witnesses, documents, money and third parties involved in the transaction are widely dispersed in many different jurisdictions. Such circumstances make it difficult for the Commission to gather all the information necessary to detect injurious practices, to recover offshore assets for consumer redress, and to reach conduct occurring outside the United States that affects United States consumers.

(5) Improving the ability of the Commission and its foreign counterparts to share information about cross-border fraud and deception, to conduct joint and parallel investigations, and to assist each other is critical to achieve more timely and effective enforcement in cross-border cases.

(c) PURPOSE.—The purpose of this Act is to enhance the ability of the Federal Trade Commission to protect consumers from illegal spam, spyware, and cross-border fraud and deception and other consumer protection law violations.

SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.

Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:

''`Foreign law enforcement agency' means—

''(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

''(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).''.

SEC. 3. AVAILABILITY OF REMEDIES.

Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:

''(4)(A) For purposes of subsection (a), the term `unfair or deceptive acts or practices' includes such acts or practices involving foreign commerce that—

''(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

''(ii) involve material conduct occurring within the United States.

''(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.''.

SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTS.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting ''(1)'' after ''such information'' the first place it appears; and

(2) by striking ''purposes.'' and inserting ''purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).''.

(b) OTHER POWERS OF THE COMMISSION.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is further amended by inserting after subsection (i) and before the proviso the following:

''(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

''(1) IN GENERAL.—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

''(2) TYPE OF ASSISTANCE.—In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

''(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

''(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.

''(3) CRITERIA FOR DETERMINATION.—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

''(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

''(B) whether compliance with the request would prejudice the public interest of the United States; and

''(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

''(4) INTERNATIONAL AGREEMENTS.—If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

''(A) provide assistance using the powers set forth in this subsection;

''(B) disclose materials and information in accordance with subsection (f) and section 21(b); and

''(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.

''(5) ADDITIONAL AUTHORITY.—The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

''(6) LIMITATION.—The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of section 6 (15 U.S.C. 46).

''(7) ASSISTANCE TO CERTAIN COUNTRIES.—The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App.2405(j)(4)).

''(k) REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.—

''(1) IN GENERAL.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

''(2) INTERNATIONAL INFORMATION.—The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

''(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—To expend appropriated funds for—

''(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

''(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

''(A) such incidental expenses as meals taken in the course of such attendance;

''(B) any travel and transportation to or from such meetings; and

''(C) any other related lodging or subsistence.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—The Federal Trade Commission is authorized to expend appropriated funds not to exceed $100,000 per fiscal year for purposes of section 6(l) of the Federal Trade Commission Act (15 U.S.C. 46(l)) (as added by subsection (b) of this section), including operating expenses and other costs of the following bilateral and multilateral cooperative law enforcement agencies and organizations:

(1) The International Consumer Protection and Enforcement Network.

(2) The International Competition Network.

(3) The Mexico-U.S.-Canada Health Fraud Task Force.

(4) Project Emptor.

(5) The Toronto Strategic Partnership and other regional partnerships with a nexus in a Canadian province.

(d) CONFORMING AMENDMENT.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking ''clauses (a) and (b)'' in the proviso following subsection (l) (as added by subsection (b) of this section) and inserting ''subsections (a), (b), and (j)''.

SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.

Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended by adding at the end the following:

''(c) FOREIGN LITIGATION.—

''(1) COMMISSION ATTORNEYS.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

''(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

''(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

''(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.''.

SEC. 6. SHARING INFORMATION WITH FOREIGN LAW ENFORCEMENT AGENCIES.

(a) MATERIAL OBTAINED PURSUANT TO COMPULSORY PROCESS.—Section 21(b)(6) of the Federal Trade Commission Act (15 U.S.C. 57b-2(b)(6)) is amended by adding at the end ''The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

''(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

''(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

''(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

''(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

''(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

''(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

''(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.''.

(b) INFORMATION SUPPLIED BY AND ABOUT FOREIGN SOURCES.—Section 21(f) of the Federal Trade Commission Act (15 U.S.C. 57b-2(f)) is amended to read asfollows:

''(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

''(1) IN GENERAL.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

''(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

''(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

''(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

''(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

''(B) SAVINGS PROVISION.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.''.

SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.

(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 21 the following:

''SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

''(a) APPLICATION WITH OTHER LAWS.—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.

''(b) PROCEDURES FOR DELAY OF NOTIFICATION OR PROHIBITION OF DISCLOSURE.—The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

''(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

''(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

''(c) EX PARTE APPLICATION BY COMMISSION.—

''(1) IN GENERAL.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

''(2) APPLICATION.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

''(3) LIMITATION.—No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

''(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

''(1) the underlying conduct reported;

''(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

''(3) any failure to comply with any obligation the recipient may have to disclose to a

Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

''(e) VENUE AND PROCEDURE.—

''(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

''(2) In camera proceedings.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

''(f) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211).

''(g) ADVERSE RESULT DEFINED.—For purposes of this section the term 'adverse result' means—

''(1) endangering the life or physical safety of an individual;

''(2) flight from prosecution;

''(3) the destruction of, or tampering with, evidence;

''(4) the intimidation of potential witnesses; or

''(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

''(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

''(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

''(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.''.

(b) CONFORMING AMENDMENT.—Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (C) by striking ''or'' after the semicolon;

(2) in subparagraph (D) by inserting ''or'' after the semicolon; and

(3) by inserting after subparagraph (D) the following:

''(E) under section 21A of this Act;''.

SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is further amended by adding after section 21A (as added by section 7 of this Act) the following:

''SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

''(a) IN GENERAL.—

''(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

''(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

''(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

''(2) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

''(A) for the underlying conduct reported; or

''(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

''(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

''(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

''(A) related to possibly fraudulent or deceptive commercial practices;

''(B) related to persons involved in such practices; or

''(C) otherwise subject to recovery by the Commission; or

''(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

''(c) CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

''(d) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

''(1) A financial institution as defined in section 5312 of title 31, United States Code.

''(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

''(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

''(4) An Internet service provider or provider of telephone services.''.

SEC. 9. STAFF EXCHANGES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by adding after section 25 the following new section:

''SEC. 25A. STAFF EXCHANGES.

''(a) IN GENERAL.—The Commission may—

''(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act or section 3101 or section 3109 of title 5, United States Code; and

''(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

''(b) RECIPROCITY AND REIMBURSEMENT.—The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

''(c) STANDARDS OF CONDUCT.—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.''.

SEC. 10. INFORMATION SHARING WITH FINANCIAL REGULATORS.

Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended by inserting ''the Federal Trade Commission,'' after ''the Securities and Exchange Commission,''.

SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS, GIFTS, AND VOLUNTARY AND UNCOMPENSA TED SERVICES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended—

(1) by redesignating section 26 as section 28; and

(2) by inserting after section 25A, as added by section 9 of this Act, the following:

''SEC. 26. REIMBURSEMENT OF EXPENSES.

''The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

''SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED SERVICES.

''(a) IN GENERAL.—In furtherance of its functions the Commission may accept, hold, administer, and use unconditional gifts, donations, and bequests of real, personal, and other property and, notwithstanding section 1342 of 10 title 31, United States Code, accept voluntary and uncompensated services.

''(b) LIMITATIONS.—

''(1) CONFLICTS OF INTEREST.—The Commission shall establish written guidelines setting forth criteria to be used in determining whether the acceptance, holding, administration, or use of a gift, donation, or bequest pursuant to subsection (a) would reflect unfavorably upon the ability of the Commission or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

''(2) VOLUNTARY SERVICES.—A person who provides voluntary and uncompensated service under subsection (a) shall be considered a Federal employee for purposes of—

''(A) chapter 81 of title 5, United States Code, (relating to compensation for injury); and

''(B) the provisions of law relating to ethics, conflicts of interest, corruption, and any

other criminal or civil statute or regulation governing the standards of conduct for Federal employees.

''(3) TORT LIABILITY OF VOLUNTEERS.—A person who provides voluntary and uncompensated service under subsection (a), while assigned to duty, shall be deemed a volunteer of a nonprofit organization or governmental entity for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.). Subsection (d) of section 4 of such Act (42 U.S.C. 14503(d)) shall not apply for purposes of any claim against such volunteer.''.

SEC. 12. PRESERVATION OF EXISTING AUTHORITY.

The authority provided by this Act, and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States.

SEC. 13. REPORT.

Not later than 3 years after the date of enactment of this Act, the Federal Trade Commission shall transmit to Congress a report describing its use of and experience with the authority granted by this Act, along with any recommendations for additional legislation. The report shall include—

(1) the number of cross-border complaints received by the Commission;

(2) identification of the foreign agencies to which the Commission has provided nonpublic investigative information under this Act;

(3) the number of times the Commission has used compulsory process on behalf of foreign law enforcement agencies pursuant to section 6 of the Federal Trade Commission Act (15 U.S.C. 46), as amended by section 4 of this Act;

(4) a list of international agreements and memoranda of understanding executed by the Commission that relate to this Act;

(5) the number of times the Commission has sought delay of notice pursuant to section 21A of the Federal Trade Commission Act, as added by section 7 of this Act, and the number of times a court has granted a delay;

(6) a description of the types of information private entities have provided voluntarily pursuant to section 21B of the Federal Trade Commission Act, as added by section 8 of this Act;

(7) a description of the results of cooperation with foreign law enforcement agencies under section 21 of the Federal Trade Commission Act (15 U.S.C. 57–2) as amended by section 6 of this Act;

(8) an analysis of whether the lack of an exemption from the disclosure requirements of section 552 of title 5, United States Code, with regard to information or material voluntarily provided relevant to possible unfair or deceptive acts or practices, has hindered the Commission in investigating or engaging in enforcement proceedings against such practices; and

(9) a description of Commission litigation brought in foreign courts.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 224—TO EXPRESS THE SENSE OF THE SENATE SUPPORTING THE ESTABLISHMENT OF SEPTEMBER AS CAMPUS FIRE SAFETY MONTH, AND FOR OTHER PURPOSES

Mr. DEWINE (for himself and Mr. BIDEN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 224

Whereas recent student housing fires in Ohio, Pennsylvania, Tennessee, and Maryland have tragically cut short the lives of some of the youth of our Nation;

Whereas since January 2000, at least 75 people, including students, parents, and children have died in student housing fires;

Whereas over three-fourths of these deaths have occurred in off-campus occupancies;

Whereas a majority of the students across the Nation live in off-campus occupancies;

Whereas a number of fatal fires have occurred in buildings where the fire safety systems have been compromised or disabled by the occupants;

Whereas it is recognized that automatic fire alarm systems provide the necessary early warning to occupants and the fire department of a fire so that appropriate action can be taken;

Whereas it is recognized that automatic fire sprinkler systems are a highly effective method of controlling or extinguishing a fire in its early stages, protecting the lives of the building's occupants;

Whereas many students are living in off-campus occupancies, Greek housing, and residence halls that are not adequately protected with automatic fire sprinkler systems and automatic fire alarm systems;

Whereas it is recognized that fire safety education is an effective method of reducing the occurrence of fires and reducing the resulting loss of life and property damage;

Whereas students are not routinely receiving effective fire safety education throughout their entire college career;

Whereas it is vital to educate the future generation of our Nation about the importance of fire safety behavior so that these behaviors can help to ensure their safety during their college years and beyond; and

Whereas by developing a generation of fire-safe adults, future loss of life from fires can be significantly reduced: Now, therefore, be it

Resolved, That the Senate—

(1) supports the establishment of September as Campus Fire Safety Month;

(2) encourages administrators and municipalities across the country to provide educational programs to all students during September and throughout the school year; and

(3) encourages administrators and municipalities to evaluate the level of fire safety being provided in both on- and off-campus student housing and take the necessary steps to ensure fire-safe living environments through fire safety education, installation of fire suppression and detection systems and the development and enforcement of applicable codes relating to fire safety.

SENATE RESOLUTION 225—DESIGNATING THE MONTH OF NOVEMBER 2005 AS THE ''MONTH OF GLOBAL HEALTH''

Mrs. MURRAY (for herself, Mr. SMITH, Mrs. CLINTON, Mr. CORZINE, Ms. CANTWELL, Mr. DAYTON, Ms. LANDRIEU, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 225

Whereas child survival is a key element of global health and is of utmost importance to the United States and all countries of the world;

Whereas child survival must be addressed on a global scale;

Whereas increasing child survival rates is critical to population growth in countries around the world;

Whereas child survival depends on access to key nutrients that can avert millions of unnecessary deaths in third world countries from preventable diseases;

Whereas 5 simple interventions, if delivered to children before the age of 5, may significantly increase their chances of survival;

Whereas these 5 interventions—vaccines, antibiotics, Vitamin A and micronutrients, oral rehydration therapy, and insecticide-treated bednets—can be provided to third world countries at minimal cost;

Whereas 10,000,000 children die each year from preventable diseases in third world countries and 6,000,000 of those deaths could be prevented by the use of these interventions: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of November 2005 as the ''Month of Global Health'';

(2) reaffirms its commitment to ensuring that children around the world receive the interventions necessary for survival as an integral component of efforts to improve global health; and

(3) encourages the people of the United States to observe the ''Month of Global Health'' with appropriate participation in key activities, programs, and fundraising in support of worldwide child survival.

Mrs. MURRAY. Mr. President, I want to take time to comment on the resolution I am introducing today which designates the month of November 2005 as the ''Month of Global Health.''

Today we live in a global community where all nations both benefit from those countries that prosper, and suffer with those that do not. The Month of Global Health is a great opportunity to increase awareness of the pressing global health crisis that threatens our own public health and that of all nations around the world.

I believe this resolution is important and draws attention to the needs of a growing population of children in the developing world that are living without proper health care and the essential nutrients they need to survive. The resolution also highlights the necessary steps that must be taken to increase child survival rates in developing countries.

Child survival is one of the key elements to addressing global health. As a nation, there is much more we can do to assist developing nations in their effort to increase child survival rates. We must work on a global scale to avert the millions of unnecessary deaths among children caused each year from preventable diseases.

This resolution reaffirms our commitment to the children of the world and sends a message that child survival is a fundamental component in our efforts to improve global health.

Mr. SMITH. Mr. President, today I am pleased to join my colleague Senator MURRAY in introducing an important resolution that will recognize November as the ''Global Health Month.''

Every year, 10 million children die from preventable diseases in Third World countries. As many as 6 million of these deaths can be prevented by