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Senate

The Senate met at 2 p.m. and was called to order by the Honorable JIM WEBB, a Senator from the State of Virginia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.

Let us pray.

Lord God, eternal and infinite, at the beginning of this new week, we give You thanks for the grace You bestow upon us daily. Thank You for each morning with its light, for rest and shelter of the night, for health and food, for love and friends, for everything Your goodness brings.

Please continue to guide our judgment and actions so that we may fulfill Your will. Help us when we are blind so that we may see the path You have set before us. Remind our leaders to remember those in need.

Continue to watch over those who serve and protect our country. Lord, give wisdom to our Senators as they guide us down the challenging road into the future.

And, Lord, we ask You to comfort Senator NORMAN COLEMAN as he mourns his father's death.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JIM WEBB led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 30, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM WEBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WEBB thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, the Senate will be in a period of morning business until 3 p.m. The time will be equally controlled between the two leaders. At 3 p.m., the Senate will resume consideration of the motion to proceed to H.R. 796, with the time until 5:30 to be equally divided and controlled between Senators BAUCUS and GRASSLEY or their designees.

At 5:30, the Senate will proceed to vote on the motion to invoke cloture on the motion to proceed. If cloture is invoked, we can proceed to this very important legislation quickly.

For all Members of the Senate, last week we accomplished a lot. Here are the ''must dos'' this week: SCHIP and lobbying and ethics reform. There are other things we would like to do and, if we can get consent, we will do them.

The competitiveness conference report is completed. I hope we can do that by unanimous consent. The WRDA bill is completed, and we hope to be able to do that by unanimous consent. We also, again, later today, will offer a unanimous consent request to do the Freedom of Information Act improvements. This is an extremely important piece of legislation. It has bipartisan support and Senators LEAHY and CORNYN are the sponsors. I hope we can complete this before we leave. The Republicans raised an objection last week when we raised this by unanimous consent. I hope that problem is now taken care of.

So that is what we have to do. I will repeat, we must complete SCHIP and lobbying and ethics reform, and the other matters would be icing on the cake if we can do them.

IRAQ

Mr. REID. Mr. President, last week was a very productive week for the Senate and the American people. With Democrats and Republicans working together, the Senate was able to pass the conference report implementing the 9/11 Commission recommendations. Also, we passed the Fiscal Year 2008 Homeland Security appropriations bill and the Higher Education Reauthorization Act.

This week, we will turn our attention to important domestic initiatives, including reauthorizing the Children's Health Insurance Program and passing the ethics conference report to strengthen the integrity of our Government. That legislation is completed. The House will pass it tomorrow. Without any qualification or reservation, it is the most significant lobbying and ethics reform in the history of our country. I hope we can do this piece of legislation without a lot of turmoil. I hope that people understand how important it is to the American people.

As we focus on issues that will lead to a better and brighter future for millions of Americans, two new reports illustrate that neither the present nor the future seem particularly bright for the Iraqis and Iraq itself, where our brave troops are fighting in this intractable civil war.

One report that came down this morning is from a humanitarian organization. The other is from President

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Bush's own Inspector General for Iraq Reconstruction.

According to the first report—released by Oxfam, an international aid organization, and the NGO Coordination Committee network in Iraq—8 million Iraqis are in need of immediate emergency aid. So according to this first report, 8 million Iraqis are in need of immediate emergency aid. That is probably more than a third of the population. It means they are desperately lacking basic daily necessities such as food, water, and sanitation.

Even more troubling, these conditions are worse now than before the war started. Before the war, 19 percent of Iraqi children were malnourished. Today, that is 28 percent. And 50 percent lacked adequate water supplies before the war; that is now 70 percent. So 70 percent of all Iraqis live without clean water.

With awful and deteriorating conditions such as these, it is no wonder a recent poll of the Iraqi people showed 70 percent of the Iraqi people believe the American presence is making them less safe.

Our troops are certainly not to blame for these failures to make the Iraqi people safer or healthier. In the war's 4-plus years, they have accomplished everything they have been asked to do. They took down the Iraqi dictator. They have heroically battled those who seek to destabilize Iraq and the region. They have provided time for Iraqi factions to come together and negotiate a peaceful settlement of their differences which, unfortunately, these factions have not taken advantage of.

These failures lie with the President, who took us to war without a plan for peace, and the Defense Department generally, which has not managed to administer a strategy for success, and the Iraqi Government, which hasn't taken responsibility for their country's own future.

The second new report, from the Inspector General's Office for Iraq Reconstruction, sheds new light on how thoroughly our efforts in that area have failed to help Iraqis and how dearly that failure is costing American taxpayers.

This inspector general's report tells us Iraq's central government has refused to take responsibility for more than 2,300 reconstruction projects America has already paid close to $20 billion to construct.

The result is many projects are lapsing or continue to rely on American funds only.

I say this in the background of the Iraqi people having arguably the largest oil reserve in the world. When I met those in the first Iraqi Government, along with Senator Frist, one of the Iraqis proudly said of the governing body: People say we have the second largest oil reserves in the world, but we have the largest oil reserves in the world.

I don't know whether it is first or second, but they have a lot of oil, which translates to money, and they are not helping at all with these projects.

Not a single project has been turned over to the Iraqi Government in more than a year. Even among those few that have been turned over, many, if not most, are now failing.

As a result, our almost $6 billion investment in Iraq reconstruction is largely being wasted. What would happen in America? We would not tolerate $6 billion being wasted in taxpayer dollars, and we should not stand for it in Iraq—especially when it is our taxpayers' money that is being wasted.

As long as we continue our open-ended commitment of troops, the Iraqi Government has no incentive to step up. As long as we continue financing projects that they let lapse, they will continue to let our troops and taxpayers shoulder the burden.

The father of a soldier from Nevada wrote me recently to tell me how that burden is affecting his son and his son's fellow soldiers. He gave me permission to read this when I called and asked him after reading this heartfelt letter. He asked me not to mention his son's name, so I am not going to do that. I will not mention the man's name who wrote the letter. If anybody has a question, I will be happy to show them the letter in my office.

He wrote:

> Our son is a 20-year-old cavalry scout in the Army. He and his best friend quit college their first semester to ''make a difference.'' We are a close-knit family and although we only get to speak to Mike once every 3–4 weeks, the conditions, morale and circumstances he deals with are like nothing we read about in the press.
>
> I have always supported our troops but cannot support the war anymore, particularly when I continue to receive information from my son that is upsetting to me. He has not had a day off since his deployment in early January. He has had his hummer blown up and narrowly escaped death, seen his close friend blown to pieces 30 yards away, had a suicide bomber blow up a hummer in his unit 50 yards away, and the stories go on.
>
> My concern is no days off, 7 days a week in combat, 4 hours of sleep per night and no days off in sight for the future. I have to buy a good deal of equipment for him to send over to Iraq . . .
>
> I am a successful local businessman and a very patriotic person . . . but we feel helpless and do not know who to speak to . . . What do our soldiers have to look forward to except fighting every day, looking death in the eye daily, no days off, strategy that changes daily, 125 degree weather, [and] little communication with the outside world . . .''

The Presiding Officer, from firsthand experience, knows what this man is talking about. Most of us don't.

This young man from Nevada, fighting with bravery far beyond his 20 years, deserves better.

As his father said, he signed up for the Armed Forces to ''make a difference.'' There are challenges facing America in nearly every corner of the globe—real dangers that will affect our security for generations to come. This young soldier should be helping us wage a real war on terrorism that goes after those who attacked us. He should be involved in peacekeeping missions to stop genocide and spread peace. Instead, he is stuck in an endless war that even President Bush's own military experts admit has no military solution.

It is long past time to end this preoccupation with Iraq. It is time to rebuild our overburdened military, so this young soldier from Nevada, and 160,000 more just like him, have the rest and care they need to do their job effectively.

As we work this week to make life better for millions of Americans at home—especially children—we continue to think of our troops and the Iraqi people who suffer abroad, and we will continue to work every day to bring about the new course our troops and all Americans deserve.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees.

The Senator from Maryland is recognized.

Mr. CARDIN. I thank the CHAIR.

(The remarks of Mr. CARDIN pertaining to the introduction of S. 1899 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CARDIN. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

AMERICANS WITH DISABILITIES RESTORATION ACT

Mr. HARKIN. Mr. President, last Thursday, July 26, 2007, was the 17th anniversary of the signing of the Americans with Disabilities Act. On that day in 1990, thousands of people gathered on the south lawn of the White House. It was the largest gathering at least to that date—it may still be—for the signing of legislation. It was a beautiful sunny day. President Bush signed the Americans with Disabilities Act into law. That bill had taken a long time to develop, years to develop. A lot of hard work and effort went into it.

As the chief Senate sponsor of that bill, getting that bill passed was the proudest day in my life, having been raised with a brother who was disabled. Seeing how he was discriminated against all his life compelled me when

I first came to the House and then to the Senate to work on these issues, the issues of the discrimination against Americans with disabilities and how people with disabilities had been kept out of the mainstream of American life, how they had been shunted aside, warehoused, categorized in ways that demean their personhood in ways that prevented them from contributing all they could to our American society.

So the Americans with Disabilities Act was a major civil rights act—a major civil rights act—to ban discrimination, just as we did against people of color, against women, national origin, sex, for example. We now include people with disabilities under a broad civil rights umbrella.

We have made great advances since that time. It is all over. One can see it wherever one goes—curb cuts, accessible buses, accessible trains, widened doors. Every building now built in the United States of America is fully accessible. Architecture has changed. I have a nephew who is an architect, and he said when that bill became law in the 1990s, architecture school started teaching different subjects, architecture firms started designing buildings differently for universal accessibility. We have come to accept that situation.

There is a problem, and the problem has come about through some Supreme Court decisions of late. That is why last Thursday on the 17th anniversary of the signing of the Americans with Disabilities Act, I joined with Senator SPECTER of Pennsylvania, with House majority leader STENY HOYER, and the ranking member of the House Judiciary Committee, Congressman JIM SENSENBRENNER, in introducing a bipartisan measure called the ADA Restoration Act of 2007.

As I will explain in more detail shortly, this bill offers a modest, reasonable legislative fix in response to court decisions that have misconstrued the original legislative intent of the Americans with Disabilities Act, which I will refer to now on as the ADA.

Again, what is remarkable about this legislation is that it was done in a spirit of genuine bipartisanship, with Members of both parties coming together to do the right thing for millions of Americans with disabilities. But that is the way we developed the first ADA in 1990. It was a truly overwhelming bipartisan effort. As I said, as I was the chief sponsor in the Senate, I worked very closely with then-Senator Bob Dole who had been the majority leader and then was the ranking minority member in the Senate. We had invaluable support, of course, from the White House. President George Bush, Bush 41, George Herbert Walker Bush, was very helpful; Key members of the administration—I especially want to note for the record Boyden Gray, White House counsel, without whose support and intervention the law probably would never have been passed; Attorney General Richard Thornburgh, again a key player in getting the ADA passed in 1990; Sam Skinner, then Transportation Secretary, also was very much involved.

The introduction of the ADA Restoration Act last Thursday and the reaction to it has been a breath of fresh air amidst all the going back and forth politically in Washington, very much in the same spirit we had in 1990 when members of both parties embraced the legislation as something that can and should be done and should be beyond partisanship. There was a sense that on this one measure, we could put partisanship aside and come together as a unified body and make a real difference in the lives of our fellow citizens who have disabilities.

The fact is, we all take pride in the progress we have made in the last 17 years. Nobody wants to go backward. The ADA, as I said, is one of the great landmark civil rights legislation of the 20th century, a long overdue emancipation proclamation for millions of Americans with disabilities.

Again, we removed most physical barriers. We have required employers to provide reasonable accommodations so that people with disabilities can get jobs and have equal opportunity in the workplace.

There were four goals of the ADA, four pillars, so to speak: equality of opportunity, full participation, independent living, and economic self-sufficiency.

The reach of the ADA revolution struck me some time ago in Washington. I attended a downtown convention of several hundred disability rights advocates, many with very severe impairments. They arrived in Washington on trains and planes and buses built to accommodate people in wheelchairs. They came to the hotel on the Metro and in regular buses all seamlessly accessible by wheelchair. They navigated city streets equipped with curb cuts and ramps. The hotel where the convention took place was equipped in countless ways to accommodate people with disabilities. There were sign language interpreters on the dias so people with hearing disabilities could be full participants.

For those of us able-bodied, these many changes are all but invisible, but for a person in a wheelchair, for a person without sight, for a person with deafness, they are transforming and liberating.

So our provisions in ADA outlawed discrimination against qualified individuals with disabilities in the workplace and required employers to provide reasonable accommodations. But, as I said, a problem has arisen.

In recent years, the courts have ignored Congress's clear intent as to who is to be covered by the ADA. The courts have narrowed the definition of who qualifies as an individual with a disability. As a consequence, millions of people whom we intended to be covered by the ADA, including people with epilepsy, diabetes, yes, even cancer, are not protected anymore. In a ruling this spring, the Eleventh Circuit Court even concluded that a person with mental retardation was not disabled under the ADA.

Looking back to the legislative history, it is abundantly clear that we in Congress intended that the protections of the Americans with Disabilities Act apply to all persons without regard to mitigating circumstances, such as taking medicine or using an assistive device.

Nonetheless, in a series of cases, the Supreme Court has all but ignored congressional intent. Together, these Supreme Court cases have created an absurd and unintended catch 22-type situation. People with serious health conditions, such as epilepsy or diabetes or seeing problems, who are fortunate to find treatments that make them more capable and independent and, thus, more able to work may find they are no longer protected by the ADA. If these individuals are no longer covered by the ADA, then their request for reasonable accommodations in the workplace can be ignored, denied, or they can be fired. On the other hand, if they stop taking their medication or stop using an assistive device, they will be considered a person with a disability under the ADA but they won't be qualified for the job.

Think about what kind of a position this puts a person in. Let's say you have epilepsy and you take medication to control it. That makes you able to work. But under the Court decisions, if you take a job and the employer finds out you have epilepsy, they can fire you. And guess what. You are not covered by the ADA. On the other hand, if I have epilepsy, I don't take my medication, and I have seizures, I will never get the job. This is absurd. It is absurd, and it is wrong. It flies in the face of clear, unambiguous congressional intent.

I often tell people that when we write laws here, we don't write every little thing into the law. That is why we have hearings, that is why we have committee prints, and that is why we have report language that goes with the laws we pass. It is very clear and it was common agreement at that time, on both sides of the aisle and with the White House, that the law was designed to protect any individual who is treated less favorably because of current, past, or a perceived disability—a perceived disability.

Listen to the report language. Here is the report language we had in the Senate report accompanying the bill:

> Whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids.

The House report says the same thing and goes on to say:

> For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, which substantially limit a major life activity, are covered

under the definition of disability, even if the effects of the impairment are controlled by medication.

This is important because if an individual, I repeat, is not considered to be disabled under the ADA, then they do not have the protections of the Americans with Disabilities Act. For example, as I said, they are not entitled to reasonable accommodation on the job and they can be fired for any reason—let's say not being able to do the job without an accommodation. So if you are a person with a disability and you have an assistive device, you get the job and you need a reasonable accommodation so you can do the job, but the employer says: I am not going to do it, well, guess what. They do not have to because the individual is no longer considered disabled. But if they didn't have the assistive device, they wouldn't get the job in the first place.

This is what has happened, and it has created consternation among people with disabilities who want to use assistive devices and take medication and do things—they want to work. But if they do that, they are no longer protected by the ADA.

So that is why we have introduced the ADA restoration bill, to again overcome the hurdles the Supreme Court has pronounced in three or four cases—I won't get into those now—and so that we get to the original intent of the ADA, which is to say you are covered if you have a past disability, a present disability, or you are perceived to have a disability.

Again, I repeat, we have a supreme absurdity confronting people with disabilities now. People with serious health conditions, such as epilepsy or diabetes, who are fortunate to find treatments that make them more capable and independent, more able to work, may now find they are no longer covered by the ADA.

One last thing. In another Supreme Court case, the Court held there must be ''a demanding standard for qualifying as disabled.'' This, too, has resulted in a much more restrictive requirement than Congress intended and has had the effect of excluding countless individuals with disabilities from the protections of the law.

So the situation cries out for a modest, reasonable legislative fix, and that is exactly what Senator SPECTER and Congressmen HOYER and SENSENBRENNER and I and many other cosponsors propose to do with the ADA Restoration Act of 2007. Our bill amends the definition of disability so that people Congress originally intended to be protected are covered under the ADA.

Mr. President, 17 years ago, the Americans with Disabilities Act passed with overwhelming bipartisan support. Likewise, today, we are building a strong bicameral, bipartisan majority to support ADA restoration. As I said, the companion bill was introduced in the House last week. Now, as with the ADA in 1990, it will take some time. We have to have hearings. It has been referred to four committees in the House and referred to the HELP Committee here in the Senate. But I am grateful for the bipartisan spirit with which we are approaching this legislation.

We have said all along, going clear back to the 1980s, that the Americans with Disabilities Act is supremely nonpartisan. There is nothing Republican, Democratic, liberal, conservative, or anything else about this. It is simply doing the right thing. As we look back over the last 17 years, we can take pride in what we have done, particularly when you see the curb cuts all over America or you go into movie theaters now and you see places where people with wheelchairs can come in or you go into restaurants now and see families taking out somebody who maybe has a seeing-eye dog or a companion dog. We have even made the Capitol of the United States fully accessible to people with disabilities. As I said, every place all over America, even sports stadiums, has been transformed.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired, and the time of the majority has also expired.

Mr. HARKIN. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. HARKIN. Again, we have come to the point where we have to go back and put into law what it is we originally intended and to cover people now who are caught in this absurd catch-22 situation. We have an opportunity again to come together as Republicans and Democrats. We have a chance to come together for millions of Americans with disabilities.

I look forward to working with colleagues on both sides of the aisle to restore Congress's original intent, to ensure that Americans with disabilities are protected from discrimination. So on behalf of Senator SPECTER and myself, the Senate bill is S. 1881, and we encourage Senators to take a look at it. We hope we can get good bipartisan support, have our hearings on it this fall, and get this enacted as soon as possible, probably early next year sometime.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

SMALL BUSINESS TAX RELIEF ACT OF 2007—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to the consideration of H.R. 976, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the bill (H.R. 976) to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, the psalmist sang:

Out of the mouths of children and infants, You have ordained strength.

Today we begin debate on a bill to renew and add strength to a program that helps children and infants, the State Children's Health Insurance Program, known as SCHIP. CHIP works. Since the plan began 10 years ago, CHIP, or the Children's Health Insurance Program, has cut the number of children without health insurance by more than a third, more than a third over the last 10 years.

Health insurance matters. Children with health coverage are more likely to get the care they need when they need it; that is, if they have health coverage. Because of SCHIP, millions of children get checkups. They see doctors when they are sick. They get the prescriptive medicines they need.

Uninsured children suffer. Uninsured kids are less likely to get care for sore throats, for earaches, and asthma. When care is delayed, small problems can become big problems. Nearly half of uninsured children have not had a checkup in the past year. Uninsured children are twice as likely to miss out on doctor visits or a checkup.

I think of a single mother from my home town of Helena, MT, who learned that her son had epilepsy. When did she find out? She found out right after her son lost private health coverage. She checked into other health care plans but none covered the expensive medication her son needed. Plans called her son's epilepsy a preexisting condition.

Then a friend told her about CHIP. She applied, and she found out her son was eligible. Thanks to CHIP, this young man got the medications he needed, and his mother got the peace of mind she deserved.

CHIP, again known as Children's Health Insurance Program, makes sense as an investment. A child who is healthy can go to school. A child who is healthy in school is more likely to do well. A child who does well in school is more likely to get a job. And people with jobs are less likely to end up in jail or on public assistance.

Thus, CHIP helps Americans to compete. Ensuring that kids can have health insurance is an investment in America's future.

CHIP helps. CHIP helps more than 6 million children whose parents work

but cannot afford insurance on their own—6 million. These low-income working families are not poor enough for Medicaid, and they are not rich enough to afford private health insurance. Ninety-one percent of children covered by CHIP live in families making less than twice the poverty level.

It is time to strengthen CHIP. Millions of children have no health insurance. There are more kids without health insurance than there are kids in the first and second grades combined. Think of that: more kids without health insurance than there are kids in America in the first and second grades combined.

Americans overwhelmingly support getting their kids healthy, and the Senate will begin debate on a bill that will fulfil CHIP's promise to the 6.6 million children now covered. And our bill will cover 3.2 million more children who are now uninsured. This bill is a good compromise. It puts enough resources on the table to make a difference for children. It keeps CHIP focused on kids, and it is fiscally responsible.

We keep CHIP focused on kids. Childless adults who are covered today will transition off the program. No new waivers will be allowed for CHIP coverage of childless adults. Coverage of low-income parents will transition to separate block grants at a lower match rate. No new waivers will be allowed for CHIP coverage of parents.

We build in flexibility. States will be able to designate CHIP funds to help families afford private coverage offered by employers or other sources.

We pay for what we do. When Congress created CHIP in 1997, we paid for it with a cigarette tax. We continue that funding source. We increase the Federal tax on cigarettes by 61 cents, and we make proportional increases for other tobacco products. Increasing the cigarette tax will also discourage smoking, particularly among teens. And that will be good for kids, too.

CHIP is the legacy of work by Senators of goodwill from across the spectrum. It is the legacy of work by Senators such as CHUCK GRASSLEY and JAY ROCKEFELLER, ORRIN HATCH and TED KENNEDY. This year, Senator GRASSLEY and I worked with Senators ROCKEFELLER and HATCH to craft a consensus package that was the basis of the bill, the bill before us today.

The Finance Committee modified it and endorsed it with a strong 17-to-4 vote. I believe the committee has produced a bill of which the Senate can be proud. I thank my colleagues for their hard work, for their patience, and their commitment to getting something done.

CHIP is not new. CHIP is tried and it is true. It has worked successfully for 10 years. And four out of five Americans would like to see Congress add new funds to the program.

Now it is time for us to act. For the benefit of children and infants, let's provide strength to the benefit of children. Let's expand health care coverage, and for the benefit of children let's pass this legislation.

Mr. President, I yield 10 minutes to one of the fathers of this program with whom I am very proud to have worked this last year, and did yeoman's work, did a great job for kids and also his State of West Virginia, Senator ROCKEFELLER.

Mr. ROCKEFELLER. Mr. President, I rise with great pride today to speak in support of the Children's Health Insurance Program—or CHIP—Reauthorization Act of 2007, legislation I authored with Senators BAUCUS, GRASSLEY and HATCH to provide health care to 4 million children in need. It is fitting that we are starting debate on CHIP reauthorization today because in less than 1 week—on Sunday, August 5, 2007—we will be celebrating the 10-year anniversary of the date that this landmark and widely successful program was signed into law. This all started out quite some time ago with John Chafee and myself and some others, about 10 years ago. But there has been an intensity of effort led by Chairman BAUCUS, Ranking Member GRASSLEY, myself, and ORRIN HATCH over the last 3 months, meeting up to 2 hours a day, virtually every day, our staff meeting around the clock to try to reach bipartisan consensus, which we have reached, all by giving up some and reaching accommodation.

I have to say I have a lot of pride in what we are doing today. But I hope we will fulfill our work in the Senate in the next few days. It is interesting that Sunday, August 5, 2007, is the actual 10-year anniversary this program. As you know, it expires at the end of September, in which case all children who now have health insurance under this program—all of children, not only the new ones we are including, but all of them—would lose their health insurance.

This legislation is incredibly personal to me, if I may say so, because I spent 4 years chairing the National Commission on Children. It was a long time ago. I swore I would try to honor the commission with its very wide spectrum of American public officials and private people, by getting our unanimous recommendations into law. And one of them was, in fact, the Children's Health Insurance Program. So I do that very carefully. I also do that with a certain personal emotional experience.

When our oldest son was born, when he was 10 days old, he developed something called pyloric stenosis, which is called projectile vomiting, which means your stomach is not taking in food.

Because we had health insurance, and we could afford health insurance—unlike the people of the chairman of the Finance Committee's bill that we are discussing. Because we could afford that health insurance, we could take him down to the hospital. He had an operation, and he is doing fine. Otherwise he would have died. So that is partly what is inside of me during this debate.

As I think about this, I think in 1997 we were acting out of despair and frustration because of what was not happening for children. Sometimes I think this body's best work comes at a point when we do reach genuine despair and frustration, when we cannot take it any more. We are so aware of what we are not doing that we proceed to do it.

I think that is part of what is propelling us now. The Children's Health Insurance Program is proven, as the chairman of the committee has said. It works very well. In 2006, more than 6 million children were enrolled and were receiving good benefits.

Together, CHIP and Medicaid have significantly increased children's health insurance. Even as the overall number of uninsured Americans who are not children have gone up, the number of insured children have remained steady and it even declined. In fact, between 1997 and 2005, CHIP and Medicaid reduced the percentage of children below 200 percent of poverty without health insurance by about one-third. More insured children, less uninsured because of the good work of this bill.

West Virginia, we have 39,000 children who are affected by this program. One can say that 39,000 is not very many, or one can say that is 39,000 lives that have been profoundly and intimately affected by all of this. Again, I am moved by that.

I started work as a Vista volunteer in West Virginia. I remember what it was like when kids did not get health care. And that feeling remains in me today as strongly as it did in 1964 when I went to West Virginia for the first time. Anyway, the facts are not so good for everybody.

There is a wonderful 12-year-old boy named Deamonte Driver. His mom knows that feeling all too well. Her son lost his life because the Medicaid coverage lapsed for him, and a dental infection spread to his brain and he died. That happens in America. It happens every single day. We do not notice it. But that is what we are here in this Chamber for: to minimize that as much as we possibly can.

The bill before us today is $35 billion. That provides health insurance coverage for 4 million low-income children who would otherwise be uninsured. Let me repeat. They would be uninsured. Most of them are already eligible for Medicaid or CHIP but not currently covered, and that is at a cost of $35 billion over 5 years—not per year but over 5 years.

As Peter Orszag, who is the very talented CBO Director, said this is the most efficient possible way per new dollar spent to get reduction of roughly 4 million uninsured children.

Now, it was not easy to get to this point. It was very hard for me because I wanted a $50 billion program. It was in the budget mark for $50 billion.

There are a lot of things we had to give up because we had to arrive at a place where Republicans and Democrats could agree. As we met every afternoon for several hours in Chairman BAUCUS's office, we had to come to a point where Republicans who wanted $22 billion, or the President's program, or us, who wanted $50 billion, where we could ratchet it down so we could agree on something. So we agreed on the $35 million. That is where our chairman, MAX BAUCUS, was a fearless leader. He and I have sort of agreed—I think we have all agreed—we are going to oppose any amendment which enlarges this program, which would tend to make us happier, or which would diminish the program, which would tend to make others happier. We are going to oppose amendments. That is not a comfortable thing to do. We don't offer enough dental in this bill for my taste. But when somebody comes and says: I want more dental because dental is so important, because so many kids lose their teeth by the time they are 14, 15-years-old, I will oppose that, because I want to keep the integrity of this bill to make sure that 10 million children who are at risk of no health insurance without CHIP get to keep their health insurance.

Our legislation passed the committee 17 to 4. The Finance Committee is a tough committee. Seventeen to four it passed; that is a huge vote. So today is monumental.

The bill does basically three things. The bill eliminates the Federal CHIP shortfall so States could keep covering the 6.6 million kids they cover now. You remember the President reduced the budget from $15 billion to $5 billion, so that would have taken effect. The increase in health care costs has also made things more difficult. So eliminating the shortfalls restores CHIP coverage to 1.4 million children. Again, 1.4 million is a lot of families, a lot of lives who would have lost CHIP and faced a lot of agony and a lot of people staying up at night lost in despair.

Secondly, it provides new Federal resources for States to cover 2.6 million children currently eligible for Medicaid or CHIP but not enrolled. They are out there, as eligible as anybody else, but they are not enrolled because the money isn't there for them. We have sent $20 billion to Saudi Arabia to do what they want, to buy arms. I keep asking: What if we were to do some of that here? What if we were to do that on climate change? That is not the discussion of the afternoon so I won't pursue it, but our legislation includes 1.7 million who are Medicaid eligible, and 900,000 who are CHIP eligible. This 2-to-1 ratio matches the ratio of uninsured Medicaid-eligible children to uninsured CHIP-eligible children.

And, third, this bill improves the predictability and stability of the CHIP funding formula so that States can cover more children.

At the proper time, I will support my colleagues in strongly supporting this bill, which is a start.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my friend from West Virginia. Before the former chairman speaks, I compliment him on his steadfast advocacy for the members of his caucus and for the work for kids he has demonstrated. He has a difficult job. He is standing up for his side of the aisle. There was negotiation, innumerable meetings. I can't mention the number of meetings we have had, there have been so many. At the same time he has also worked for kids. I compliment him for working hard to accomplish both objectives.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank the chairman of the committee for his kind words, and my kind words go to reemphasize the close working relationship over a period of 6 years, now going into the seventh year, he and I have had being leaders of both the Republican and Democratic members of the Finance Committee. I thank him very much for continuing that working relationship while he was chairman a few years ago and now chairman again. That is why this committee produces legislation that eventually gets to the President. I thank the Senator very much.

The State Children's Health Insurance Program—and people watching will hear the acronym SCHIP used often—is the product of a Republican-led Congress 10 years ago, 1997, and it is sunsetting this year. That is why we are here reauthorizing and bringing more kids into the Children's Health Insurance Program. It is very much a targeted program designed to provide affordable health coverage for low-income children of working families. These families make too much to qualify for Medicaid but struggle to afford private insurance if they can even get it. It is important that we reauthorize this targeted program for children. The Finance Committee bill proposes a reasonable approach for reauthorizing SCHIP that is the product of months of bipartisan work in the committee. Chairman BAUCUS referred to innumerable meetings. We don't keep track of the number of meetings we have, but for every meeting Senator BAUCUS and I have been involved in, usually Senator HATCH and Senator ROCKEFELLER were there as well. In the meantime, including a lot of weekends of work, the staffs of the respective Senators were involved in negotiations to get us to the floor this day.

Once again, I emphasize what I heard Senator ROCKEFELLER say. This is a bipartisan bill voted out of committee on a vote of 17 to 4. It is a compromise. I think it is the best of what is possible. Clearly Members on the left would want to do more. My colleagues on the right want to do less and go in a different direction. Neither got what they wanted. That is pretty much the essence of a compromise, not only on SCHIP but the essence of compromise in the Senate probably over two centuries of the Senate's history.

This compromise bill maintains the focus on low-income, uninsured children and adds coverage of an additional 3.2 million low-income children.

Although I have been pleased with the bipartisan cooperation that led us to the substance of the bill, I can't say the same for the way in which the bill is now being debated on the floor. Without participation or consultation, the Democratic leadership decided to use a so-called shell revenue bill, the House small business tax relief bill, as a vehicle for debate. The Democratic leadership will correctly maintain that the reason for this unusual maneuver is a strategic decision to accelerate a couple of procedural steps. That is nothing new in the Senate. You can't find fault with trying to shorten up the process because the Senate process is already long enough. But since there is no House-passed SCHIP revenue bill in the Senate now and not likely to be one by the time the Senate debate ends this week, the Democratic leadership wants to take a shortcut now.

While I share the goals of completing Senate action on SCHIP and doing it this week, I would rather not be debating a general tax bill. This shortcut means, then, that it is legitimate for Members on both sides of the aisle to raise unrelated tax amendments. That was not the posture we took in committee. In fact, we discouraged that, and we got both Republicans and Democrats to agree to voting this bill out as a health insurance bill and not as a general tax bill except for the provisions that relate to tobacco. Of course, now we are on the floor. The stage is set very differently.

When I found out about this maneuver from the Senate Republican leader, Mr. MCCONNELL, I urged the Democratic leadership, through Senator BAUCUS, to reconsider. I feared this shortcut would only widen the playing field for the first stages of the debate. Obviously, my counsel was rejected. It is disappointing but so be it.

Despite my objections to this procedural maneuver, I do support the Senate Finance Committee bill and will have more to say about it after the cloture vote this afternoon. In fact, I will have a lot to say about it. I will have a lot to say about particularly people who believe we have gone too far. I want to make very clear that it would be impossible to do what the President said he wanted to do under the amount of money he wanted to put into this program, which was $5 billion over what is presently being expended. Obviously, we are way above that at $35 billion, but we were able to do what the President wanted to do and cover some more kids. I will go into details on that later on.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. I yield 10 minutes to the chairman of the HELP Committee, one of the fathers of the CHIP program, the Senator from Massachusetts.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, many of the best ideas in public policy are the simplest. The Children's Health Insurance Program is based on one simple and powerful idea—that all children deserve a healthy start in life, and that no parents should have to worry about whether they can afford to take their child to the doctor when the child is sick. CHIP can make the difference between a child starting life burdened with disease or a child who is healthy and ready to learn and grow.

I would like to begin by thanking my colleagues Senator BAUCUS, Senator GRASSLEY, Senator ROCKEFELLER and Senator HATCH for their dedication to making sure that more of America's children have a start at a healthy life. They have worked diligently to reach the bipartisan bill that we have for us today. But I am not surprised by that.

Throughout the history of CHIP, Members on both sides of the aisle have exercised true leadership and set politics aside to focus on the needs of children. Senator BAUCUS, Senator ROCKEFELLER, and Senator BAUCUS have long been advocates for the health and well-being of children and have been willing to work with those who shared that goal.

My old friend Senator HATCH and I worked together in 1997 to create this program that was our shared vision for healthier future for American children. This year, we have once again worked together to find common ground on covering the children deserve decent, quality health care.

As we now consider the future of CHIP it is instructive to look back on the history of the program and the circumstances in which it was created.

The enactment of Medicaid in 1965 brought decent health care to families living in poverty, including children. But it became clearer and clearer as the years and the decades passed, that more and more children were unable to obtain health care because they lived in families whose incomes were too high to qualify for Medicaid but too low to afford health insurance.

Finally, in Massachusetts, in the 1990s we agreed that health care coverage for children is a necessity and that action needed to be taken. John McDonough, executive director of Health Care for All in Massachusetts, deserves much of the credit for what came next. His pioneering work while he was in the Massachusetts Legislature on children's health care led to the passage in 1993 of the State's Children's Medical Security Plan, which guaranteed quality health care to children in families ineligible for Medicaid and unable to afford health insurance.

A year later, Massachusetts expanded eligibility for Medicaid, and financed the expansion through a tobacco tax—the same approach we used successfully a few years later for CHIP and the same approach that is proposed in the bill before us now.

Rhode Island and other States took similar action, and helped create a nationwide demand for action by Congress to address the unmet needs of vast numbers of children for good health care.

In 1997, Congress acted on that call, and the result was CHIP. Senator HATCH and I worked together then—as we have this year—to focus on guaranteeing health care to children who need it. Now in every State in America and in Puerto Rico, CHIP covers the services that give children a healthier start in life—well child care, vaccinations, doctor visits, emergency services, and many others.

In its first year 1997, CHIP enrolled nearly a million children, and enrollment has grown ever since. An average of 4 million are now covered each month, and 6 million are enrolled each year. As a result, in the past decade, the percentage of uninsured children has dropped from almost 23 percent in 1997 to 14 percent today. That reduction is significant, but it's obviously far from enough.

CHIP improves the overall quality of life for children fortunate enough to have its coverage, by allowing them to get the care they need when they need it. They are more likely to have a real doctor and a real place to obtain care, and, their parents don't delay seeking care when their child needs it. Children on CHIP also have significantly more access to preventive care.

Studies also show that CHIP helps to improve children's school performance. When children are receiving the health care they need, they do better academically, emotionally, physically and socially. CHIP helps create children who will be better prepared to contribute to America. CHIP all but eliminates the distressing racial and ethnic health disparities for the minority children who disproportionately depend on it for their coverage.

CHIP's success is even more impressive and important when we realize that more and more adults are losing their own insurance coverage, because employers reduce it or drop it entirely.

That's why organizations representing children, or the health care professionals who serve them, agree that preserving and strengthening CHIP is essential to children's health. The American Academy of Pediatrics, First Focus, the American Medical Association, the National Association of Children's Hospitals and countless other organizations dedicated to children all strongly support CHIP.

A statement by the American Academy of Pediatrics puts it this way: ''Enrollment in SCHIP is associated with improved access, continuity, and quality of care, and a reduction in racial/ethnic disparities. As pediatricians, we see what happens when children don't receive necessary health care services such as immunizations and well-child visits. Their overall health suffers and expensive emergency room visits increase.''

Today we are here to dedicate ourselves to carrying on the job begun by Congress ten years ago, and to make sure that the lifeline of CHIP is strengthened and extended to many more children.

Millions of children now eligible for CHIP or Medicaid are not enrolled in these programs. Of the nine million uninsured children, over two-thirds—more than 6 million—are already eligible for Medicaid or CHIP. These programs are there to help them, but these children are not receiving that help either because their parents don't know about the programs, or because of needless barriers to enrollment.

Think about that number—9 million children in the wealthiest and most powerful nation on earth; 9 million children whose only family doctor is the hospital emergency room; 9 million children at risk of blighted lives and early death because of illnesses that could easily be treated if they have a regular source of medical care.

Nine million uninsured children in America isn't just wrong, it is outrageous. We need to change it as soon as possible.

We know where the Bush administration stands. The President's proposal for CHIP doesn't provide what is needed to cover children who are eligible but unenrolled. In fact, the President's proposal is $8 billion less than what is needed simply to keep children now enrolled in CHIP from losing their current coverage—$8 billion short. To make matters worse, the President has threatened to veto the Senate bill which does the job that needs to be done if we are serious about guaranteeing decent health care to children of working families across America.

We can't rely on the administration to do what is needed. We in Congress have to step up to the plate and renew our commitment to CHIP. That is why I am supporting the CHIP bill before us. It is a genuine bipartisan compromise. This bill provides coverage to 4 million children who would otherwise be uninsured.

It adjusts the financing structure of CHIP so that States that are covering their children aren't forced to scramble for additional funds from year to year and so that Congress doesn't have to pass a new band-aid every year to stop the persistent bleeding under the current program. Importantly, this bill will not allow States to keep their CHIP funds if they aren't doing something to actually cover children.

Equally important, this bill allows each State to cover children at income levels that make sense for their state. The bill also supports quality improvement and better outreach and enrollment efforts for the program. It is a scandal that 6 million children today who are eligible for the program are not enrolled in it.

In sum, this bill moves us forward together, Republicans and Democrats' to guarantee the children of America the health care they need and deserve.

Our priority should be not merely to hold on to the gains of the past, but to see that all children have an access to decent coverage. Families with greater means should pay a fair share of the coverage. But every parent in America should have the opportunity to meet the health care needs of their children.

Quality health for children isn't just an interesting option or a nice idea. It is not just something we wish we could do. It is an obligation. It is something we have to do, and it is something we can do today. I look forward to working with my colleagues to make sure this very important legislation is enacted.

I commend the chairman of the Finance Committee and Senators GRASSLEY, ROCKEFELLER, and HATCH, who are putting the children of America first and reminding all of us of the responsibility we have for the most vulnerable Americans, the children. They have, over a considerable period, fashioned legislation that will make an enormous difference in not only the health of the neediest children but will also reduce the increasing disparity in our Nation. We have tried to make some progress in the area of education under the leadership of Senators BAUCUS, GRASSLEY, ROCKEFELLER, and HATCH. We are going to reduce another area of considerable disparity and that is among the neediest children in the Nation.

We are over the long term not only going to say we are going to have a healthier Nation because we are going to invest in children and make sure they will get a healthy start for their future, we are going to be a stronger nation because we are a healthier nation. Over a long period of time, this is obviously going to have important implications in terms of the quality of health not only of the children but of our Nation.

This is an enormously important day in the Senate. I thank the leadership for giving this the kind of priority in these first weeks and months of a new Congress. Senator REID had indicated this was a strong priority. It is an example of where we have had strong leadership in our Finance Committee. We have had strong leadership in the Budget Committee. There are scarce resources because of our involvement in Iraq, limited resources, but nonetheless, under the leadership of Senator CONRAD and with the strong support of our colleagues, we were able to get the commitment that we on this side of the aisle and the other side, with those courageous Republicans, are saying this is a matter of national priority. This is of national importance. We are moving ahead. I thank all of those Senators.

Having listened in our caucus, a number of our colleagues have been strong supporters of our leaders on the Finance Committee. I thank my colleague and friend JOHN KERRY, among others. I thank all of those for bringing us to where we are today.

This is an enormously important occasion. I welcome the opportunity to speak to it.

I want to go back over the period when we saw the fashioning of this legislation a number of years ago. We have found this was just about the time the country was dealing with the issue of the tobacco settlement. There was a question about how we could use the resources that were going to be gained from the settlement. There was a great debate. Many in this body thought we ought to use it all for deficit reduction; we ought to give it back to the States and let them make the decision. But there were a number of bipartisan Senators saying: No, let's make sure that we develop what is an extremely important need, and that is health care for children. There was a recognition that in 1965, with the passage of Medicaid legislation, we tried to take care—we still don't include all the children who should be there—of the poorest of the poor children. We said at that time, as a matter of national policy, that we as a country were going to give focus to the neediest in our country. It was the Medicaid program for the neediest, but a special attention was given to children in the Medicaid program. That was matched with dedication and commitment in the development of a title I program to deal with education for the neediest children in our country. Those went along together, and we are coming back to the point where we are doing that under these circumstances. So this legislation is important, and I welcome the chance to say these words.

I wish to also point out, as others have pointed out, the area of need. We know we are making a downpayment on the area of need, but we still have a long way to go if we are serious about including all the children who are eligible. We need to take care of the neediest children in Medicaid.

But then we need to look at those in our economy who are working hard, playing by the rules but who cannot afford health care for their children. Those are the ones who are reaching $18,000 or $20,000, up to $35,000, $38,000, $40,000 a year, depending on what part of the country they are in. We find out that those are the individuals and those are the families who are the most hard-pressed in any event to afford health care. We know the cost of $8,000, $9,000 per family for health care. We know the challenges those families are facing, and we know the increasing number of those families who are being dropped from health insurance.

This program was to try to build upon the Medicaid Program and then have the CHIP program going, taking care of all children in this country, and to take care of working families—maybe the working poor but, more accurately, working families—to make sure their children were going to be attended to. This, I believe, is where this legislation is targeted. These families are working hard. They are part of our American system. They are playing by the rules. But affording that protection is not available to them. The CHIP program reaches out to them. Some can say: Well, this is an expensive program. I have listened to all my colleagues. I have listened to Senator WYDEN from the State of Oregon speak eloquently about this issue. We need to remind ourselves this body is about trying to define priorities. What are the Nation's priorities? What is important to us? We are here to try to give focus and attention and direction to the areas of greatest need.

What our bipartisan leadership today is saying is the area of greatest need is the children. In this case, the children are members of working families who are virtually unable to get that kind of focus and attention and coverage unless they have access to this program.

What are greater priorities than education and health care focused on our children? We still know there is more to be done. So I welcome this opportunity to speak. I wished to spend a little time speaking on this issue. I have referred to how this whole program has reduced health disparities among children and also how it has reduced disparities on the basis of race in our communities across the country. It was not focused on that, but that was the unintended consequence. So this legislation is a matter of enormous importance.

Finally, I would say, as to this program, if we are interested in educating the children of this country, we have to make sure the children can hear the teacher. We have to be able to make sure the children are going to be able to see the blackboard. We have to make sure the children have proper dental care. I commend, particularly, the efforts they have made in dental care for children in this program. It is not mandated, but there are resources here to encourage the development of these dental programs. We are all aware that dental plans are some of the first to leave. We have seen the number of children out there with deterioration of their teeth, with all kinds of consequences. As we all read in the Washington Post not long ago, some children actually lost their lives.

So I thank those who have been a part of this process. I commend all of them. This is a very worthwhile effort. I am hopeful it will be very successful.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I now recognize the chairman of the Senate Budget Committee, Senator CONRAD from North Dakota, for 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I thank the chairman of the Finance Committee not only for this recognition but for his leadership in putting this

legislation together. This has not been easy to do. It has been extraordinarily challenging. We wish to thank Senator BAUCUS, the chairman of the Finance Committee, for his diligent effort and his advocacy for this program. I also thank Senator ROCKEFELLER of West Virginia for the extraordinary effort he has made with respect to extending children's health insurance in this Nation. I also recognize, on the other side, Senator HATCH and Senator GRASSLEY.

We are now debating legislation to reauthorize the Children's Health Insurance Program, otherwise known as CHIP. This is one place where we should all be in agreement. To extend health care to our children has to be one of America's priorities. There is no greater moral obligation than providing for the least among us, especially our children. We also know providing health care for kids is a good investment because improving their health early on is an investment paid for over a lifetime. You get the return for a lifetime.

The bipartisan Children's Health Insurance Program has been extremely successful in getting kids covered and keeping them healthy. Experts across the country agree. Here is what one health care expert had to say about the Children's Health Insurance Program:

> It is a simple idea: We invest in children's health care, and we get healthy children eager to learn and grow,'' said Dr. Rob Nordgren of Child Health Services of Manchester (New Hampshire). . . . Nordgren said children who get good health care, which begins early in life and continues without interruption, are less likely to need expensive interventions as adults.

What could be a simpler or more profound idea than that? You provide health care to children, and that is a gift that keeps on giving. It keeps on returning on the investment through that child's lifetime. This is a good investment.

There are 6.6 million children who now have health insurance because of the Children's Health Insurance Program. But 9 million children remain uninsured, and 6 million of these kids are eligible for the Children's Health Insurance Program or Medicaid right now, but we do not have the money to actually provide them the coverage. In this reauthorization, Congress simply needs to invest more to reach these kids.

But let's be clear. If we do not act, we are not only losing an opportunity to get more kids covered—if we freeze the current program, by 2012, there will be over 1.4 million fewer children covered simply because of a lack of funds.

Here are some facts about this bill.

First, it provides health insurance for 4 million more uninsured kids, children who would otherwise go without coverage. To bring it closer to home, this bill will mean an increase in funding for North Dakota to get more kids covered. In fact, North Dakota's allotment will almost double, from about $7.7 million now to over $13 million next year. This will allow the State to cover 1,450 more children over the next two years.

Second, I think it is important to note this bill is fully paid for over 6 and 11 years. Therefore, it fully complies with pay-go. We have heard some other ideas here. As chairman of the Budget Committee, let me be clear, this bill fully meets its pay-go obligations. It also meets the other requirements of the Children's Health Insurance Program reserve fund set out in the 2008 budget resolution that allows for the reserve fund adjustment.

Third, it is a 5-year reauthorization. Congress will reauthorize in 2012 with new policies and with new offsets. Perhaps we will not even need a Children's Health Care Insurance Program by then because perhaps by then we will have reformed the way we deliver health care in this country.

I believe the time is right to do that, and certainly in this next 5 years, it will become more critical because we know we are on a course that is absolutely unsustainable. So my own conviction is we will be reforming health care during this period.

Fourth, reauthorizing the children's health program could actually spur action on broader health care reform. It is wrong that our Nation has over 40 million uninsured. We must do something to fix this problem. Having SCHIP in place for this next 5 years will serve as a bridge to what we all hope will be a brighter day of fundamental health care reform.

Now, let me conclude by saying, some have criticized this bill on budgetary grounds. To the extent that funding levels in the outyears are lower, it simply means we will have to pay for these costs during the next reauthorization. But that is the way it always works.

I have been stunned to hear some of my Republican colleagues complain that this bill sunsets at the end of 5 years. They say: Well, if the program continues beyond that 5 years, there will be a cost in those succeeding years. Well, of course that is true. But this bill is paid for, for the next 5 years, unlike what they did on their enormous tax cuts.

Look at this slide I have in the Chamber that shows what they did. These are the tax cuts, under current law, that they put in place, without paying for any of them, by the way. As shown on the chart, here is what it would cost to extend those tax cuts: $421 billion in 2017—$421 billion. That is shown on the chart. Here is what extending the CHIP program would cost by comparison. Do you see this little, tiny line at the bottom of the chart?

Now, our friends on the other side are complaining about that little gap. They say nothing about this yawning chasm created by them—$4.1 trillion. They say nothing about that. But they complain about this tiny sliver to provide health care insurance for our kids. One has to ask: What priorities are those?

Again, this SCHIP funding is paid for. Overall, this bill sets us on a responsible path to get every child in America covered with health insurance. Four million fewer children will be without health insurance as a result of this legislation. We should be proud of that.

It is not socialized medicine, as some have asserted. The Children's Health Insurance Program and Medicaid are partnerships between States and the Federal Government. These programs use private doctors and private health plans to provide services. This is not socialized medicine.

The children's health program is successful. It was created with strong bipartisan support. Faith leaders, business groups, labor, insurers, health providers all support this reauthorization proposal.

Partisan politics should not get in the way of providing health care insurance for our kids. Goodness knows, if we cannot agree on anything else on the floor of this body, we should be able to agree on providing health care insurance for our kids.

America's children are counting on us. They deserve our very best and they deserve our support for this legislation. We cannot let them down. I hope all my colleagues are paying close attention to what is at stake. If they are, they will support this legislation.

Again, I thank the chairman of the committee, Senator BAUCUS, for his leadership and his untiring efforts and Senator ROCKEFELLER for, over and over, bringing the challenge of health care insurance for our kids to the attention not only of the committee but of the full Senate and of the country.

I thank the Chair and yield the floor.

Mr. BAUCUS. Mr. President, I yield 7 minutes to the Senator from Oregon, a very valuable member of the committee and a tireless advocate for good, solid health care.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I don't want to turn this into a bouquet-tossing contest, but I do want to single out the bipartisan quartet: Chairman BAUCUS, Senator ROCKEFELLER, who is here, Senator GRASSLEY, and Senator HATCH. To carve out hours and hours, as the four of them have day after day, is evidence of their commitment. I just want them to know I am very much aware we would not be here today advocating for America's kids without their work and their effort to find common ground. I wish to start the day by praising the four of them.

Mr. BAUCUS. If the Senator will yield, I note the Senator from West Virginia is a very busy man and he could be doing other things, other meetings, and so forth, but he has decided to stay on the floor during all debate on this bill, and I think that is a testament to how strongly he is committed to getting this legislation passed, as well as the Senator from Oregon. The two of you could be vying for

who is an even stronger advocate for health care, and you both do a good job.

Mr. WYDEN. I thank you and all four of you for your efforts.

Mr. President, it seems to me this is the opening bell of round one in the fight to fix health care in America. Fixing health care is the premier domestic issue of our time.

Suffice it to say we heard in the Senate Finance Committee and we hear on the floor of the Senate every day that the current health care system cannot be sustained. The costs are going up too dramatically. The rapid growth of the elderly population is, of course, relentless, and the disadvantage our employers face every day competing in tough global markets cannot be sustained.

My sense is the challenge for the United States is twofold. One—and this is embodied by what Senator ROCKEFELLER, Senator BAUCUS, Senator HATCH, and Senator GRASSLEY are doing—is to meet the immediate needs of the most vulnerable Americans, immediately. It is obscene that millions of youngsters, in a country as rich and strong and prosperous as ours, go to bed at night without decent health care. The bipartisan effort of these four Senators is moving to erase this moral blot on our country. I am proud to be supporting the four of them in this effort.

But as we move to tackle these immediate needs of the most vulnerable Americans, let us also set about the task of trying to transform American health care. Senator BENNETT, a member of the Republican leadership, has joined me in this effort. We brought to the floor of the Senate the first bipartisan health reform bill in more than 13 years. As Senator ROCKEFELLER knows, as we are both admirers of the late John Chafee, his was the last, and Senator BENNETT and I want to work with colleagues to pick up on this effort. Senator BENNETT and I have tried to build on the bipartisanship embodied by Senator ROCKEFELLER, Senator HATCH, Senator BAUCUS, and Senator GRASSLEY.

What we are saying is that you need something of an ideological truce on health care in our country. I think my party has been right in saying you have to get everybody covered. It is the moral thing to do. If you don't do it, the people who are uninsured shift their bills to the insured. But I think colleagues on the other side of the aisle have had a point as well in saying that you just can't turn everything over to Government, that there is a role for the private sector. So Senator BENNETT and I are trying to pick up on the prospect of an ideological truce, just as Senators ROCKEFELLER, BAUCUS, GRASSLEY and HATCH have tried to do on the children's health program.

I can tell my colleagues, having served on the Senate Finance Committee through the markup, and through those weeks and weeks of discussion, that what Senator ROCKEFELLER and the other leaders of the Finance Committee had to do was a heavy lift. There are a lot of colleagues on our side of the aisle who wanted to spend more. They were interested in covering other groups of citizens. That was unacceptable to colleagues on the other side. So Senator ROCKEFELLER and Senator BAUCUS had to swallow hard; they had to make concessions on points that were important to them. That is what Senator BENNETT and I are trying to do in terms of transforming American health care. So I am glad Senator ROCKEFELLER and the group on the Finance Committee have brought us a bipartisan piece of legislation because it lays the groundwork, in my view, for going further.

I have a word for the administration on this point in particular: I am very hopeful they will join the bipartisan effort here in the Senate to find common ground. We know this bill has a long way to go. It will be considered by this body. The other body has other ideas with respect to how to tackle this issue.

I would say to the administration that there are a number of us on both sides of the aisle who want to work with them on a broader piece of health legislation. But to get to that broader piece of health legislation, you first have to deal with the needs of the children. In fact, in the budget resolution—and this has not been widely noticed—it specifically stipulates that the children's health program would come first, before there was an effort to deal with heath issues in a broader way.

Now, I share the view of the administration with respect to the Tax Code in health care. It is a mess. It is regressive. It disproportionately rewards the most affluent in our society and promotes inefficiency at the same time. If you are a high-flying CEO, with today's Tax Code, you can go out and get a designer smile put on your face and write off the cost of every dime of that operation on your taxes. But if you are a hard-working woman in West Virginia or Oregon or elsewhere and your company doesn't have a health plan, you don't get anything out of the Tax Code.

So I am supportive of working with the administration in a bipartisan way to fix the Tax Code as it relates to health care and to fix the private marketplace. But you don't get there until you first deal with the needs of our children. So I want to be conciliatory, both with respect to the administration and with colleagues on both sides of the aisle. We have a big opportunity with this issue.

With respect to domestic issues, one of the biggest ones—the immigration legislation—obviously reached something of a standstill. If we can sustain this bipartisan effort for the country's most vulnerable—and I know of no one in the Senate—no one—who doesn't care about the well-being of our kids—if this effort can be sustained, there will be a broad berth for another effort to move significantly to transform American health care.

Seven members of the Senate Finance Committee, during our discussion of the children's health program, specifically talked about the need to fix American health care. Senator CONRAD, the distinguished chairman of the Budget Committee, pointed out that over the next 5 years—the life of this program—there will be plenty of opportunities to transform American health care. Senator BENNETT and I are saying we want to do it in this session. We don't think we got elected to wait around for another 2, 3, 4 years to fix health care; we want to do it in this session.

We had a very promising hearing in the Senate Budget Committee where support for our efforts was demonstrated by both the chairman of the committee and the ranking minority member. I wish to underscore that even the Senate budget resolution makes clear that this program for children will be done first. As Senator BAUCUS and Senator ROCKEFELLER pointed out earlier, this is a question of reauthorizing existing Federal law. The country has already made the judgment that the needs of children are going to come first. But a lot of us are not going to say the job is done by passing one extremely important bill; that there will be more to do, there will be an opportunity to do it in a bipartisan way.

While he is on the floor, I want to thank Senator ROCKEFELLER, Senator BAUCUS, Senator GRASSLEY, and Senator HATCH.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. WYDEN. I ask unanimous consent for 1 additional minute.

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

Mr. WYDEN. I just want to use it to thank our colleagues who are the principal architects of the children's health program. Because of those of us who would like to go further in this Congress, the bipartisanship the leaders of the Senate Finance Committee have shown is going to give us that kind of opportunity, if the administration will join this bipartisan effort as it goes through this body and the other body.

Mr. President, I yield the floor.

Mr. BAUCUS. Mr. President, I yield 1 minute to the Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank the Chair, and I thank the manager of the bill.

I wanted to pick up on a point Senator CONRAD made briefly. I want to get this so clear at the beginning of this whole amendment debate and whatever debate follows: The whole concept that somehow this Children's Health Insurance Program is a Government-run health care program—is wrong. Throw that out. It is completely and totally wrong. It is not even an entitlement program. It is a capped block grant program to the

States. It is optional. The States don't have to use it if they don't want to. All of them do, including the District of Columbia, but it is optional.

In virtually all cases, the CHIP programs as they are carried out by the States are funded through private insurance, very much the way it was done in the Medicare prescription drug benefit plan. Thirty-nine States only use private insurance. It has nothing to do with the Government-run health insurance program. It is health insurance under the private sector using insurance companies, private insurance companies.

Mr. President, I thank the Presiding Officer and yield the floor.

Mr. BAUCUS. Mr. President, I notice Senator DOLE on the floor. I don't know if she wishes to speak on this measure. I see Senator GRASSLEY is not on the floor, but I, on behalf of Senator GRASSLEY, will yield such time as the Senator would like to consume.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

Mrs. DOLE. Mr. President, I am perplexed by what is happening in the Senate these days. Many of my colleagues are calling for a huge tax on tobacco—a product purchased disproportionately more by lower income people. This tax hike is said to provide billions of dollars to expand SCHIP health care coverage for children whose families cannot afford insurance coverage. While I strongly support reauthorizing SCHIP, a massive and highly regressive tax increase on an already unstable product is a terribly irresponsible way to fund this important program. Furthermore, my home State of North Carolina, which has lost more manufacturing jobs than any other State and continues to undergo a difficult economic transition, stands to lose tremendously if the tobacco tax skyrockets.

I am fully aware that many of my colleagues view ganging up on tobacco and smokers as politically popular. I am not appealing to you to change your views on smoking, but I am urging you to acknowledge the reality that this tax increase is an irresponsible and fiscally unsound policy.

According to the Tax Foundation, no other Federal tax hurts the poor more than the cigarette tax. Of the 20 percent of the adult population that smokes, around half are in families earning less than 200 percent of the Federal poverty level. In other words, many of the families SCHIP is meant to help will be disproportionately hit by the Senate's proposed tax hike. In addition, tobacco sales have been declining 2 to 3 percent a year and are expected to be slashed by another 6 percent if the Federal excise tax is increased. Yet in order for this tax-hike trick to work, millions more Americans would have to actually take up smoking to foot the bill.

A recent ad in Roll Call from North Carolina-based R.J. Reynolds put it best:

Below that familiar picture of Uncle Sam pointing his finger, was the line ''Congress Needs you to Smoke.''

That is right. More than 22 million additional Americans will need to take up smoking to keep the SCHIP program running over the next decade.

Another example of how ill-conceived this proposal is: The Senate very well may approve legislation this year to force the FDA to regulate tobacco products.

That agency's staff and resources are already fully consumed by its mission of regulating food, medical devices, and pharmaceuticals. But if many in the Senate have their way, the FDA will soon take on tobacco.

It is no secret that the Senate FDA bill seeks to ultimately put many tobacco companies out of business. So it appears we are going to eliminate tobacco companies while simultaneously relying on the tax revenue from tobacco sales to fund children's health care.

If we are really serious about providing health care coverage to children in lower income families, this illogical plan clearly is not going to cut it. I oppose this tax hike plan not only because it is fiscally unsound but also because it unfairly hurts my State of North Carolina.

In recent years, the forces of the global marketplace have triggered a difficult economic transformation, and our traditional industries of furniture and textiles have shuttered the doors of their factories and mills, resulting in the loss of 194,000 manufacturing jobs. Tobacco, another long-time linchpin of North Carolina's prosperity, has also faced its share of challenges from offshore competition. However, this economic engine for North Carolina has endured, but it may collapse altogether if the Senate moves forward with the 61-cent increase on tobacco products.

Tobacco is woven into the fabric of my State like Texas and cattle or Iowa and corn. In North Carolina, tobacco is part of our history and culture. In fact, many of our State's great educational institutions and health care facilities are rooted in tobacco funding. Today, more than 255,000 North Carolinians rely on tobacco for their livelihood. These are not just folks in the fields and factories but also suppliers and retailers. The industry accounts for $22 billion in value-added revenue, or 6 percent of North Carolina's economic activity.

Clearly, if the Senate indiscriminately picks this industry to foot the bill for additional Government spending, North Carolina suffers tremendously. According to Blake Brown, a widely respected agricultural economist at North Carolina State University, North Carolina would lose nearly $16 million in farm production and at least $540 million in decreased manufacturing; we would lose up to $12.5 million in the State cigarette tax revenue; and we would lose $10.3 million from our portion of the master settlement agreement payment, which funds the bulk of our safe economic development programs.

In addition to North Carolina losing thousands of manufacturing jobs, supplier and retail jobs, State Agriculture Commissioner Steve Troxler says we could lose as many as 1,800 farm jobs. Compound these jobs and revenue losses with the looming threat of FDA regulation, and North Carolina is looking at what Commissioner Troxler calls a double whammy.

The rug is being pulled out from under us. Am I supposed to go back to my constituents, whose jobs are at stake, and say: Sorry, folks, Congress doesn't think you are taxed enough, so, yes, Congress raised taxes to the tune of $35 billion at the expense of your jobs and farms? No single industry should be targeted and victimized by such unreasonable Federal regulations and taxes.

Let me be clear. Reauthorizing SCHIP has my strongest support. Since its creation in 1997, this program has lowered the number of uninsured children by almost 25 percent. As we seek to provide greater access to health care for all Americans, starting with children first is not only good policy but it is the right thing to do. However, this legislation is the wrong way to go, period.

I urge Senators to vote for the McConnell alternative. It responsibly restores SCHIP to its original content: helping low-income children. I am not asking my colleagues to sympathize with the tobacco industry and smokers. I am asking you to look at the Baucus bill for what it is: a massive tax hike that disproportionately impacts low-income people and an ill-conceived and unsound plan that unfairly targets a single industry and hurts the economy of several States.

Let's reauthorize SCHIP, but let's do it the right way.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. DURBIN). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I wish to reserve time for Senators to speak. I ask unanimous consent that the following time be reserved for these Senators: CASEY, 5 minutes; STABENOW, 5 minutes; WHITEHOUSE, 5 minutes; BINGAMAN, 5 minutes; and myself, the remaining 5 minutes. I think that totals 25. How much time remains on this side?

The PRESIDING OFFICER. The Senator from Montana has 24 minutes remaining.

Mr. BAUCUS. Then I will cut myself down to 4 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Pennsylvania, Senator CASEY.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I thank Senator BAUCUS, my distinguished colleague from Montana, for not only the argument he is putting forth today on children's health insurance but in a special way his leadership on the Finance Committee.

On the question of children's health insurance, the Senate is confronted with a very serious matter, a matter that has long-term implications for millions of families and our economic security. I believe at least two questions must be asked and answered this week, and they are as follows:

Question 1: Will the Senate make a full commitment to the children of America and especially to their health care?

Secondly, does the Senate want America to have a high-skilled workforce in the future to compete in an ever-changing economy and a furiously competitive world economy?

For that reason and so many others, I thank the Senators in this Chamber who have provided the leadership on the Finance Committee, including Senator ROCKEFELLER, Senator BAUCUS and, many years ago, Senators KENNEDY and HATCH, who came together in a bipartisan way, as they are today, and Senator GRASSLEY, among others.

A lot of people watching today may ask what is this program we are talking about? We hear SCHIP, the acronym. Let's call it children's health insurance for short because the acronyms don't make a lot of sense sometimes. It is a 10-year program, where we have covered 6.6 million children, so they can have well-child visits, dental exams, preventive care, all of the things we see on this chart, when we are speaking about a well-child visit. Every child in America should have an opportunity to communicate, through their parents, with their physician. Every family should make sure that a child within their care gets six visits to the doctor in the first year of life, a complete record of physical exams, showing height, weight, and other milestones. They should have their hearing and vision checked. They should be checked for normal development, nutrition, sleep safety, infectious diseases and, of course, general preventive care. It is critically important that every child gets that, no matter what their income is or where they live in this country.

In Pennsylvania, we have had more than a 10-year experiment; we have had children's health insurance since 1993. I am proud that my father, Governor Casey, and every succeeding Governor, including Republican Governors Ridge and Schweiker, and Governor Rendell, a Democrat, who strongly supported it and tried to expand this important program.

Today, I wish to talk for a couple of minutes about the coverage overall across the country. In our State, it is 162,000 children. But across the country, even though we have covered well more than 6 million children, there are still 9 million American children today who have no health insurance at all. Of those 9 million, 6 million of them are eligible right now for either the Children's Health Insurance Program or Medicaid. Of those 6 million eligible but not enrolled, 78 percent are from working families. Let me say that again: Seventy-eight percent of the children right now who are eligible for children's health insurance or Medicaid are from working families. We should remember that as we debate this issue. There is a lot of talk in this Chamber that has been misleading on that question.

We know what happens when a child has health insurance. They have access to preventive care, they perform better at school, and they are much more likely to have healthy emotional and social development. If we want—as I think every Member of the Senate wants—a skilled workforce in the future, that starts with giving quality early care and education to our children, giving them the blessing of health insurance so they can learn more now and earn more in this new century.

There are people out there saying: How do we pay for this? You are talking about an increase in children's health insurance. We pay for it by making sure we are increasing a tax that should be increased for this purpose—the tobacco tax—by 61 cents. We are going to have a long debate, and I will wrap up in a minute. When we have this debate today and in the next couple of days of this week, and when people come down to the Senate floor and talk about how much it is going to cost and why we should not do this, I ask them—especially those arguing against an increase—to hold up this pamphlet. This is the health care every Senator gets. They come in here and talk against this program and say they don't want to increase it. But I think every Senator who argues against it and says health care for Senators is a higher priority than health care for kids should hold up the health care they get, and they should thank the American people, and then they can go argue against this.

We have a long debate ahead of us. We will make sure that we make this a priority for the American people, the health care of our children.

Mr. BAUCUS. The Senator can speak longer if he wishes. He is very passionate. I ask unanimous consent for 5 more minutes for the Senator from Pennsylvania.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CASEY. My colleague from Montana gave me a lot more time and I appreciate that.

I think it is important that we talk about this program and talk about why some of the arguments have been framed and how they have been framed in the last couple of days. We have had a lot of bipartisanship here. A lot of Members of the Republican caucus in the Senate have been brave and independent enough and have focused on the needs of children enough to break with the President to say that we respect your view, Mr. President, but we have to expand this program.

I appreciate that. I am grateful for their wisdom and leadership and their integrity. They have shown an ability, and both sides have to work together on this, to make sure that when we talk about the cost of this program—the President thinks we should only increase it by $1 billion a year, when there is a consensus across the country, by far, and in this Chamber and across the way in the House to increase it by at least $7 billion a year. That is the least we should do. I think we can go higher, but to get the job done we can compromise.

I think it is very important to remember when we are talking about these numbers, one thing is abundantly clear: The President's proposal is going to have one dramatic and irreversible impact for children, and this is a fact: By 2012, if President Bush gets his way on this issue, 800,000 American children will lose their health insurance. So I want those on the other side of the aisle who have not yet come around to the thinking of most of the Members of the Senate to remember that. You are just not voting for an increase that may help some children; you are voting to cut 800,000 children off of health insurance. I know we are going to hear from some Members of the Senate that terminology about socialized medicine and Government-run health care and all of that.

I ask them again to remember the health care they get as Senators when they go on about that point. The facts are otherwise when it comes to what we are talking about. For the Children's Health Insurance Program and for Medicaid beneficiaries, these are individuals who are covered through private managed-care plans, private insurance. In Pennsylvania, we have some nine private providers for the Children's Health Insurance Program. I defy anyone to tell us these American companies are part of some Government-run program they do not support.

The support on this issue is overwhelming. The American Medical Association, all of the pharmaceutical companies virtually have not only supported it but they are advertising in favor of it, and the private insurance companies and trade associations and so many other major American companies.

President Bush said he did not want to federalize this program. I don't understand it, though, because on the one hand, President Bush says he agrees the program has worked, and on the other hand he says he wants to cap it. I don't understand why he does that.

I think it is important for us to remember the benefits all of us have in this Chamber at this time on our own health insurance.

We are going to have a lot more time later this week to talk about other aspects of this legislation. I ask every parent out there who is watching this debate to remember for just a moment what happens to their child when they are sick and when they are hurt. Your first instinct is to hug your child and to give them all the warmth and support that you can provide them. But that is not enough. Often you have to take them to a doctor or to a hospital. But for the parents of children who don't have health insurance, all of the love they provide, the warmth and embrace of a hug is not enough either, and those families and those mothers and fathers are powerless to help their children and show the full measure of their love.

I ask my colleagues and those watching today to consider what this means for a child and his or her family and also what it means for America, for our workforce, and for our economy in the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask that Senator STABENOW now be recognized to speak for 5 minutes, a very valuable member of our committee, very active member of our committee, and a fountain of ideas.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Ms. STABENOW. Mr. President, I first thank our chairman of the committee for his passion in caring for children, always keeping us focused as we brought together a bill that truly is a compromise in the best sense of the word. It is as we should be doing in the Senate, coming together with a number of perspectives and coming up with a final product. I thank the chairman for leading us in that effort and working with the ranking member. Together they have been a great team on this legislation.

The chairman has constantly said to us: It is about the children. It is about the children. Keeping us focused on what this is really about will allow us to come together in a very strong bipartisan vote for a very important bill.

I also thank Senator ROCKEFELLER for his passion in caring about children and his leadership in creating the children's health program. He and Senator HATCH have been a critical part of getting us to this point as well.

This is a step forward, and as with any compromise, it always involves give and take. I come from a State that has received 1 of the 15 waivers to cover some adults in our State. That is being phased out. That is not my first preference, but it is a compromise. It is a way to recognize this is a children's health program, and we are all coming together and coming to the middle to work together to get a product that the vast majority of the Senate can support.

We are talking about a program for uninsured children, 78 percent of whom live in working families. So we are talking about moms and dads who are working one minimum wage job, maybe two, maybe three to make ends meet. We have helped that family by passing an increase in the minimum wage.

This second piece for families who are working very hard, who care about their families and want to make sure their children have the health care they need, is very critical to supporting working families. That is really what the Children's Health Insurance Program is all about.

In Michigan, according to the University of Michigan, the number of uninsured children in our State grew by 7 percent just in 4 years, between 2000 and 2004. At the same time, we have seen employer-based coverage cut back and more and more families paying more and more of the health care bill and more and more families, as well, relying on Medicaid.

Last year in Michigan, MIChild, which is the children's health program, one-third of the children relied on MIChild or Medicaid for health coverage. One-third of all the children in Michigan in a State of 9 million people were relying on the support of this program and other public programs under Medicaid to have the health care they need. Again, three-quarters of these children came from a home with at least one working parent. So this is very much a program for families who are working hard to make ends meet, families who go to bed at night and don't want to have to say a prayer that their kids don't get sick during the night or the next day. This allows families to have the integrity of work and know that their children are able to receive the care they need.

It is also very important to point out the fact that this is very much about rural families in Michigan and around the country, not just urban families. Certainly, we care about urban children, but we know that in Michigan, the fact is, the majority of dollars are going to rural communities. Thirty-two percent of all rural children receive our children's health care program or Medicaid, 32 percent as compared to 26 percent. So this is very important for children in every part of Michigan, as well as the country.

Because of the importance of the children's health program for so many families, I urge my colleagues not to listen to the negative attacks on this carefully crafted compromise as we move forward.

There are always challenges drafting a standard 5-year reauthorization and fitting it into a budget window. In this Congress, we have or will address several other 5-year reauthorizations: the farm bill, FDA prescription drug user fees, the Trade Adjustment Assistance Act, and the ''Leave No Child Behind'' education bill.

As a member of the Budget Committee, I remind my colleagues of the problems in advancing the administration's proposal for reauthorizing the children's health program. The Senate, in a bipartisan vote, rejected this proposal.

The President's fiscal year 2008 budget proposed less than half of the funding needed for states to cover existing children, let alone to make progress in covering more uninsured low-income children.

This would be a step backwards for our children. Under the President's budget, the number of States facing shortfalls in 2012 would increase to 46.

Enrollment of children and pregnant women over the course of a year would fall by 1.6 million by 2012.

This is not acceptable. We have a chance before us to make a real difference in the lives of millions of children, many of whom are in working families.

We all made compromises on moving CHIP forward. For example, I want to work out something that keeps my State whole, but I recognize the need to continue to work in the bipartisan spirit that created CHIP in the first place.

I know some of my colleagues want to debate a whole other set of options. We should have a full debate on health care, but this is the opportunity to cover more children.

We are eager to tackle many pressing issues, especially a plan for small businesses. But the Children's Health Insurance Program expires at the end of September. Right now, we must focus our energy on reauthorizing this successful program.

Let us remember the bipartisan spirit that created this great program for our Nation's children. CHIP is a great success story that we can all be proud of.

I know my time is up, my short 5 minutes are up. I again urge all my colleagues to join us in what truly is a wonderful, bipartisan effort to cover children with health care in the United States.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the time on our side be reserved.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I first wish to pay tribute to the distinguished chairman of the Finance Committee and the distinguished ranking

member and Senator ROCKEFELLER, Senator SNOWE—so many people—Senator KENNEDY, others on the committee, Senator STABENOW, Senator WYDEN, folks on our side who have really stood up on this issue, the CHIP issue, Senator SNOWE in particular, Senator SMITH—I could go right on down the line—Senator ROBERTS who has been a stalwart. I don't want to leave anybody out.

This has been the result of tremendous negotiations over a long period of time, meeting virtually every day, led by the distinguished chairman of the committee. We have lots of issues, lots of difficulties, lots of past experience, mistakes that were made by the administration that have caused us a lot of problems, and yet a desire on the part of virtually everybody to try and do what is right for our children who basically are not being helped by our current health care system.

As we know, the CHIP bill works remarkably well. Hardly anybody I know has found fault with the way it has operated. The big problem is that we spent $40 billion over the 10-year authorization of CHIP, from 1997 to today, and it expires this September. But the costs of trying to bring on the additional kids who qualify to this program and the extra costs that have been caused by the administration issuing waivers, which has resulted in at least one or two States having more adults on the program than children, has caused some difficulties. We think we have resolved some of those problems, and we hope the vast majority of Senators will recognize that and vote for this bill.

We know the House bill is going to be off-the-charts expensive. Frankly, this is the bill people ought to look at, they ought to support, and I believe we ought to support wholeheartedly because we are trying to help the children of this country who are the least likely to be helped because they do not vote.

The CHIP bill has helped millions of children, there is no question about it. It was originally decided to help the children of the working poor who were the only kids left out of the process. The poor children were helped by Medicaid, and, of course, those in the middle class or above were able to afford their own health insurance. But these kids were left out of the program and, of course, left out of basic health care. We have been able to resolve many of those difficulties through the original CHIP program. In this program, we will do away with waivers. We can't do away with some of the grandfathered people who are on CHIP right now, but we will get childless adults out of the program, and we will bring into the program pregnant women, which we did not do before.

When we did the original CHIP bill, I was against bringing them in because of the high cost of the bill at that time. That bill cost $40 billion over 10 years. This bill will cost $60 billion over 5. But the reason for the original cost happened to be not only inflation, but also the outreach programs that were included, and the fact that we weren't covering upwards of 3 million children. Some estimate even more under the original CHIP program.

My personal belief is, if we cover these children properly, we will save billions of dollars in the long run. We will save more than what it costs us to take care of these kids. But even if we didn't, we still ought to be taking care of these children who basically are not problems to society but can be great contributors to society if they are healthy. If we don't take care of them while they are in their youth, it is very likely they will not be as healthy as they otherwise would be and, in the end, they would cost more money than if we had faced the music and done what is right now. That is why this CHIP bill is so important.

Again, I want to compliment and thank all of those who have participated in bringing this bill about.

Mr. President, I understand Senator LOTT wants to speak at 4:30. I have another set of remarks I would like to make. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I believe under the agreements that have been worked out I am going to speak at this time with regard to the SCHIP issue.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LOTT. Mr. President, let me first emphasize that we will have a motion to proceed to the State Children's Health Insurance Program this afternoon, and Republicans and Democrats will vote for that procedural motion to go forward because all of us support reauthorization of the so-called SCHIP program, which is Washington speak for State Children's Health Insurance Program.

This is a classic example of how no good deed goes unpunished because I remember when this program was developed legislatively on the Senate floor. The Senator from Utah was a key player. I remember some of the exchanges that were made at the time with Senator HATCH talking and Senator KENNEDY and Senator Phil Gramm when we created this program. This was about, I guess, 10 years ago or so. We created it because we did believe there was a need in America for children to have health assistance—a health insurance program—particularly low-income children.

There were a large number of children who were not then covered, so it was well intentioned, and everybody wanted to go forward with a program that would cover these children so their health needs could be addressed and so they could live healthier lives.

I just heard Senator HATCH make the point that if we don't have this type of health insurance available for children in critical times, a longer term cost will greatly exceed what the cost might be for the program at this time. So we were in it together. We created it at a time when we had a Republican majority in the Congress and a Democratic President in the White House. It was generally a bipartisan effort, and we created a good program that was targeted. It was expensive, but we believed it was important that we get this done.

Now, since that time, this program has continued to grow, and we have seen States start adding not only higher and higher levels of income for these children to be covered—up now to, I think, 350 percent of poverty in some States, and another State now is actually trying to get it up to 400 percent of poverty, which certainly is not low-income children. That is middle-income coverage. That would cover children in the range of a family of three making $60,000 to $70,000 a year. So that has really started causing problems, with the higher and higher level of income for children and adults being included. That was never the intent.

The core mission of this program was for children to get this help, but more and more States have included adults, and not just the pregnant mother but the parents and even adults beyond that in some of these States that have gotten waivers. It is going to be argued by some Senators, Senator GRASSLEY and probably Senator BAUCUS, that a lot of this problem has been caused by this administration—probably the previous administration but certainly this administration—by giving waivers to the States to begin to cover a higher and higher income level of children and adults. That is a legitimate criticism. They shouldn't have done it, and they shouldn't have done it the way they did. And certainly they shouldn't have done it repeatedly. I don't know how many States have gotten waivers now—14, 16 States, something of that nature, and more to come probably.

Some people at the Department of HHS will say: Well, we don't have much discretion under the waiver. I don't believe that is true, and certainly they had more discretion than they exercised. So the program now, with these waivers, has got lots of problems, and that is why I oppose it in its current form.

Let me first talk about the Baucus bill and give the reasons I am opposed to it. The baseline for this children's health program is $25 billion over 5 years—$25 billion. I believe the President, and these are general numbers, but I think the President asked for basically a $5 billion increase over those 5 years, which would have brought it up to the $30 billion range. I was thinking in committee that was not enough;

that we were going to have to go higher so that we could try to cover those children now covered in the program, realizing some who would be eligible are not covered because, No. 1, they may not have applied, No. 2, they are covered by private insurance, and No. 3, they were covered by Medicaid. But it was clear to me it was going to take more money in order to cover the children we really intended to cover than the basic of $25 billion.

Now, I thought we were going to be talking in the range of $7 billion or $8 billion, and I still believe that is the right number to continue to cover those children who are now covered by the program. The bill we have before us, though, has risen by $35 billion above the so-called baseline for a total of $60 billion over 5 years—$60 billion. A program that was originally intended for low-income children to get this health insurance, certainly never intended to be $25 billion, now in this bill would be $60 billion over 5 years, and explosive in the outyears. And this is before we go to conference with the House. The House is talking $70 billion to $100 billion.

So even though one might say: Well, this bill has gone way too far, this is the new baseline, if we pass it at $60 billion, it will only go up. What will it be, $70 billion, $80 billion, $90 billion for this program—only for this program? And by the way, a program that will include adults and will include children probably certainly well above 200 percent of poverty.

That is why we have an alternative that will make sure we cover those children we originally intended to cover and children now under the program, but we did not want this sort of doubling of the size of the program in the next 5 years. Ours would even provide for a 33-percent increase over the next 5 years. We have a real problem. It is a massive spending increase. It uses certain budget considerations to deal with what happens after the fifth year.

Some people say: Well, there will be time to change that. But nobody really believes that once you build a program, like this chart shows, that goes up, up, and up, and then all of a sudden when it reaches a certain level, it drops back down. It won't do that. It will continue to go up. And therein is the second part of the problem.

How do you pay for this? The bill before us has tax increases in the $61 billion to $70 billion range. I believe that is accurate, but a minimum of $61 billion, with that coming from a tax on cigarettes and other tobacco products. The fact is, when you tax something with that much of an increase, which takes it up to a full dollar from the current 39 cents, that is a huge increase. When you have that kind of increase, a dollar a pack on cigarettes, what you are going to get is less revenue. So at a time when the cost of the program is going up, the revenue that is actually going to be coming in is going down. That is a prescription for huge budget problems.

Of course, the argument again is, well, that is down the road; we will have time to fix that later on. But one of my concerns about the program as it is now is that it also will actually be taking children now on private insurance—children who have coverage—and they will be going off private insurance coverage and going into the so-called SCHIP program. There are an estimated 600,000 children—and I don't know how you estimate those numbers, which I suspect are low—but a large number of kids, up to perhaps as many as 2.1 million, will be moved from private health insurance programs to the Government-run health care program.

So here we have a massive spending increase, we have a program that will be taking children now covered off of private insurance and moving them on to a government program, and you have a massive tax increase.

We will have an alternative that reauthorizes the program, keeps it focused on the core mission of low-income children, which does increase funding generously, by as much as 33 percent, and avoids the huge tax increase. And the revenue it brings in is real, not a revenue that will be on a declining basis. It will give, additionally, millions of Americans access to health insurance through the small business health plans and includes reforms in the health savings accounts.

Mr. President, I know we have a number of Senators lined up to speak, but I just wanted to begin to point out some of the basic problems of how we got here, what is in this bill, and the fact that we will have an alternative that I believe is better than the one that was reported by the Finance Committee.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. MCCONNELL. Mr. President, are we under controlled time?

The PRESIDING OFFICER. Yes. The Senator from Iowa on the minority side controls 40 minutes.

Mr. MCCONNELL. I yield myself 10 minutes of my leader time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, 10 years ago a Republican-controlled Congress created and passed the State Children's Health Insurance Program. It targets the health care needs of poor children whose families make too much to be eligible for Medicaid but are still in danger of not being able to afford private health insurance.

In many ways, this program, SCHIP, is a remarkable success. The rate of children in America living without health insurance dropped 25 percent from 1996 to 2005. Last year, 6.6 million children had health care coverage thanks to SCHIP, including more than 50,000 in the Commonwealth of Kentucky. Those are some truly astounding numbers.

There is a lot of good in the current SCHIP law that we should reauthorize, but at the same time, we should also modernize and improve it.

Our goal should be to continue to target those low-income children who fall between the cracks and go without health insurance. And we should seek out those children who are eligible for SCHIP, but currently go without, and bring them into the program.

Unfortunately, I have serious concerns with the bill that the Finance Committee sent to the floor. I do appreciate all the hard work of the ranking member, Senator GRASSLEY, as well as Senator HATCH, who is one of the original authors of this program. However, the committee's bill is a dramatic departure from current SCHIP law: It will significantly raise taxes, increase spending, and lead to government-run health insurance.

Funding for this proposed massive increase in spending relies not just on a massive tax increase, but also on a budgeting gimmick. Their plan will increase SCHIP spending every year for the next 5 years, with projected spending of $8.4 billion in 2012.

Then suddenly in 2013, like magic, spending would drop to only $400 million—a decrease of $8 billion in one year. That's not because the funds won't be needed—rather, it is a sleight of hand needed to fit the program within the bill's funding limits.

But does anyone seriously think Congress will decide to cut SCHIP by $8 billion in one year, so that millions who rely on it will lose their health insurance? Of course not. Future Congresses will go back and spend more, and this proposal will end up costing exponentially more than its current price tag.

Under this scenario, the Congressional Budget Office estimates the total cost of this bill over the period from 2008 to 2017 is actually $112 billion—$41 billion more than the advertised price.

And most of this increase will go toward people that SCHIP was never meant to cover.

The expansion proposal we are considering here on the floor will allow SCHIP coverage to extend to families with incomes as high as 400 percent of the Federal poverty level—even though 89 percent of children in families with incomes as high as 300 to 400 percent of the Federal poverty level already have private coverage.

The bill also includes a tax increase, when the American people are already taxed too much. So I hope we will have a free, open debate on this bill, and every Senator will be allowed to offer ideas to improve it.

Senators LOTT, KYL, GREGG, BUNNING and I will propose an alternative measure called the Kids First Act. It refocuses SCHIP to help the people it was designed to help: low-income children.

While considerably less expensive to the taxpayers than the Finance Committee's bill, it's worth noting that many States, including Kentucky, would fare better next year under the

Kids First Act than under the committee bill.

Our plan is fiscally responsible and focuses Government assistance on those who really need it. I urge all of my colleagues to seriously consider it.

Many Senators have also worked exceedingly hard to craft comprehensive measures addressing the uninsured in America. I applaud their efforts, and look forward to having a full and open debate on the Senate floor about their ideas.

I especially want to recognize Senators BURR, COBURN, CORKER, DEMINT and MARTINEZ for their work in this regard.

As we begin to consider SCHIP legislation, this Senate should focus on reauthorizing a program that works, instead of transforming it into a license for higher taxes, higher spending, and another giant leap toward government-run health care.

Legislation like that will not receive a Presidential signature. But this Senate can craft something that will. Let's work toward that and produce a bill that focuses on the true goals of SCHIP—providing a safety net for kids in low-income families.

I also have here an editorial from today's Wall Street Journal that describes many of the problems with the committee's bill I just detailed. I ask unanimous consent that it be printed in the RECORD.

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

[From the Wall Street Journal, July 30, 2007]

THE NEWEST ENTITLEMENT

The State Children's Health Insurance Program sounds like the epitome of good government: Who could be against health care for children? The answer is anyone who worries about one more middle-class taxpayer entitlement and a further slide to a government takeover of health care. Yet Schip is sailing toward a major expansion with almost no media scrutiny, and with Republicans in Congress running for cover.

Schip was enacted in 1997 to help insure children from working-poor families who make too much to qualify for Medicaid. In the intervening years, the program reduced the rate of uninsured kids by about 25 percent but has also grown to cover the middle class and even many adults—and it gets bigger every year. Schip expires in September without reauthorization, and Congressional Democrats want to enlarge its $35 billion budget by at least $60 billion over five years.

State Governors from both parties are also leading the charge—and for their own self-interested reasons. Schip money is delivered as a block grant, which the states match while designing their own insurance programs. All cost overruns, however, are billed to the federal government, which is on the hook for about 70 percent of Schip's ''matching rate.'' This offers incentives for state politicians to make generous promises and shift the costs to the feds, or to toy around with costly universal health-care experiments. And since the states only get 57 cents on the dollar for Medicaid, they are working hard to transfer those recipients to Schip.

This self-interest explains a recent letter from the National Governors Association demanding ''urgent action'' on Schip, which got lots of favorable play in the press. Yet these are the same Governors who have been moaning for years about rising entitlement burdens, which is what Schip will be soon enough. Particularly egregious was the signature on the letter of Minnesota Governor Tim Pawlenty, a Republican who regards himself a conservative health-care maven and should know better.

This ''bipartisan'' cover is serving Democrats in Congress, who want to liberalize Schip eligibility as part of their march to national health care. The Senate Finance Committee has voted 17–4 to increase Schip spending to at least $112 billion over 10 years. Not only does it use a budget trick to hide a payment hole of at least $30 billion, it proposes to offset the increase by bumping up the cigarette tax by 61 cents to $1 a pack.

House Democrats are putting the finishing touches on their own plan, making the cigarette tax somewhat lower to win over tobacco-state Members. Instead, the House is proposing to steal nearly $50 billion from Medicare Advantage, the innovative attempt to bring private competition to senior health care.

Michigan's John Dingell explains that ''these are not cuts'' but ''reductions in completely unjustified overpayments''—which will come as news to insurers that offered coverage plans based on certain funding expectations. The ''overpayments'' he's referring to were passed expressly as an incentive for companies to offer Medicare Advantage in rural areas with traditionally fewer insurance options—and are intended to be phased out over time. Democrats apparently want to starve any private option for Medicare.

In any case, the actual costs of Schip will overwhelm these financing gimmicks. Like all government insurance, Schip is ''covering'' more children by displacing private insurance. According to the Congressional Budget Office, for every 100 children who are enrolled in the proposed Schip expansion, there will be a corresponding reduction in private insurance for between 25 and 50 children. Although there is a net increase in coverage, it comes by eroding the private system.

This crowd-out effect is magnified moving up the income scale. In 2005, 77 percent of children between 200 percent and 300 percent of the poverty level already had private insurance, which is where the Senate compromise wants to move Schip participation. New York State is moving to 400 percent of poverty, or some $82,000 in annual income. All of this betrays the fact that the real political objective of Schip is more government control—HillaryCare on the installment plan.

We'd have thought Capitol Hill Republicans would understand all this, especially with the White House vowing to veto any big Schip expansion. But we hear the GOP lacks the Senate votes for a filibuster and perhaps even to sustain a veto. GOP Senators Mitch McConnell and Jon Kyl are backing an alternative to account for population growth and reach the remaining 689,000 uninsured children that Schip was intended to help. Republicans would be wise to support this version, or they'll take one more step to returning to their historic minority party status as tax collectors for the welfare state.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that my remarks be printed in another place in the RECORD and the time be charged against our amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. HATCH are printed in today's RECORD under ''Morning Business.'')

Mr. HATCH. Madam President, I ask unanimous consent that I be permitted to yield 2 minutes to the distinguished Senator from New Mexico; that then I be able to complete my remarks on CHIP after he is done.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. First, let me thank the distinguished Senator profusely. I thought it would not be appropriate to let the SCHIP legislation proceed without some comments about how it got started.

Actually, in 1992, when I was chairman of the Senate Budget Committee, I helped to create the State Children's Health Insurance Program, also known as SCHIP, as part of the Balanced Budget Act, believe it or not.

The program has been a success. The number of children without insurance has declined by a very large amount. The Senate Finance Committee has approved a reauthorization of SCHIP, and the full Senate will take it up this week. The bill increases 5-year funding for the program from $25 billion to $60 billion. The $35 billion expansion is paid for in full by taxes on tobacco products.

In the current form, I will support the Finance Committee-passed bill. I suggest that many should. In my home State's problem with uninsured children, recent reports have New Mexico at the bottom in the Nation in coverage of these children. About 100,000 children in my State are without insurance, 25 percent of the adolescent population.

I have many concerns with the cost of this bill and the way it is paid for. However, I am willing to spend the next 5 years working on these concerns.

If the bill is substantially changed or expanded during debate this week in the Senate, or if it is significantly changed during conference with the House, they can count me out; I will no longer support it. This is about the size we ought to support, to handle our money properly and to create a program that may very well be one of those that will help us immensely with insurance for adolescents and children.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I compliment the distinguished Senator from New Mexico for his remarks. I personally appreciate them.

Mr. BAUCUS. I wish to also compliment the Senator from New Mexico.

Mr. HATCH. Madam President, this week the Senate will focus on how to reauthorize and finance the CHIP program.

Therefore, I would like to take some time on the Senate floor today to lay the groundwork for that process by examining the history of the CHIP program and the successes it has had over the last decade.

The Balanced Budget Act of 1997—BBA 97—created CHIP as Title XXI of

the Social Security Act. Today, all 50 States, the District of Columbia and five territories have CHIP programs. As is allowed by the law, 17 States use Medicaid expansions, 18 States use separate State programs and 21 States use a combination approach of both their Medicaid program and the State program.

The CHIP program is financed through both the federal and State governments and is overseen by the States. States receive an enhanced federal match for the CHIP program. This federal match is significantly higher than the federal match that States receive through the Medicaid program.

The Medicaid federal medical assistance percentage, known as F-MAP, ranges between 50 percent and 76 percent in fiscal year 2006; the CHIP F-MAP ranges from 65 percent to 83.2 percent.

Through BBA 97, approximately $40 billion in federal funding was appropriated for the CHIP program. Overall, States have spent $10.1 billion dollars since it was first implemented through September 30, 2005.

Today, approximately 6.2 million children have their health insurance coverage through the CHIP program. As one of the original authors of the CHIP program with Senator KENNEDY, Senator ROCKEFELLER, and the late Senator Chafee, I am very proud of the program's successes and I want these successes to continue.

When we drafted this legislation in 1997, our goal was to cover the several million children who had no insurance coverage. Their families were too rich to qualify for Medicaid; however, their families did not have enough money to purchase private health insurance. We have gone a long way in meeting that goal, but we are clearly not there yet. Coverage of these uninsured children is still my top priority.

I have always believed that we shouldn't even consider expanding this program to other populations until we have covered all children who do not have health care coverage.

Unfortunately, that has not been the case and a program that was created for low-income children has covered childless adults, parents of CHIP-eligible children and pregnant women. How has this happened?

Both the Clinton and Bush administrations granted waivers to States to cover adults, something that I strongly oppose. Today, 11 States cover parents through State waivers and six States cover childless adults in CHIP through State CHIP waivers.

When Senator ROCKEFELLER, Senator KENNEDY, Senator Chafee and I worked on the original legislation in 1997, our goal was to cover the several million children who had no health insurance, but I believe that the bill before the Senate today makes great progress in this area.

I believe the bill the Senate is considering this week captures the true essence of the 1997 law and builds on that foundation to insure even more children.

That, indeed, should be our purpose.

The bill drafted by Finance Committee Chairman BAUCUS, Finance Ranking Republican Member GRASSLEY, Finance Health Subcommittee Chairman ROCKEFELLER and myself is the very essence of compromise.

To be fair, it does not make any of us Republicans comfortable to face a veto threat from our President.

It does not make me comfortable to face a veto threat issued by my colleague and good friend from Utah, Secretary Leavitt.

It does not make me comfortable to advocate for such a large amount in new spending.

At the same time, I know none of you on the other side of the aisle are comfortable with the fact that we did not authorize spending up to the $50 billion limit in the budget resolution. Many of my Democrat colleagues made sacrifices in endorsing this bill and in sacrificing program expansions they so dearly advocated.

Senator KENNEDY and I often like to joke with each other that if neither side is totally comfortable with one of our compromises, we must have done a good job.

And in that spirit, I say to my colleagues, we must have done a good job.

This bill will make it all about the kids. That was our goal, and we achieved it. Our bill will provide health coverage to 2.7 million of the 6 million currently uninsured, low-income children who are 200 percent of the Federal poverty level and below.

I want to circle back to the cost of this bill.

I remember so well my conversations with my colleagues in 1997 about the cost of the original CHIP bill and the precedent it could represent.

We must recognize that we have already covered the kids who are easy to find. Six million of them to be exact.

We can all be proud of that.

But one of the lessons we have learned along the way is that it will cost proportionately more to cover the remaining children. They are harder to find and thus harder to cover.

This is what CBO told us.

So you can't do the simple math and say:

It costs $40 billion to cover 6 million kids, so it should cost $40 billion to cover the remaining 6 million kids. It doesn't work that way.

CBO told us that we need to give States more money to cover these new uninsured children, and that is what we have done.

We have made a number of other important decisions in this bill.

We have restored the program back to its intent to cover children, not adults. This was a hard decision for Senators from States with adult waivers, and I commend them for their commitment to the children.

The legislation before the committee removes childless adults from the CHIP program by the end of FY09 and afterwards, gives the States the option of covering these individuals through Medicaid.

It also prohibits the approval of any new State waivers for parents to be covered through CHIP.

Only parents living in states with approved parent waivers will be eligible for health coverage through the CHIP program.

The next tough issue was the coverage of pregnant women. While I was not opposed to this in theory, in practice we all know that the cost of one delivery could fund insurance for three or four children. That is why I opposed this coverage in 1997.

I have been convinced that States should have the option of covering pregnant women through the CHIP program. This was a difficult decision for me and, again, a true compromise.

Third, we included money for outreach and enrollment. This is key for enrollment, but as we found out, it is very expensive. So we made the decision to place a limit on the amount of money dedicated to these efforts.

Fourth, our legislation includes premium assistance through CHIP for coverage through private plans. And if it is determined that family coverage would be more cost efficient, the entire family would be covered through this health plan.

This is something that was very important to me and Senator GRASSLEY. Utah has started such a program with the hopes of providing affordable coverage to an entire family.

Fifth, our legislation includes a cap of 300 percent of the Federal poverty level for eligibility in CHIP. If a State provides CHIP coverage above that level, it will not receive the enhanced match. States with higher eligibility levels when this legislation becomes law would be grandfathered in.

Finally, I am pleased that this bill changes the name SCHIP back to CHIP, the way it was before the House added the superfluous S.

Madam President, this is a good bill. It accomplishes what we have set out to do—to take care of the children.

Yes, I wish it did not cost what it does, but I am persuaded this is necessary spending when I think of the 6 million American children who are leading healthier lives because of our vision and commitment.

We should not let the opportunity pass us buy to build on that solid foundation and do even more good for the children, our future.

I will add one more point that I want my Republican colleagues to take to heart. This is a bipartisan compromise bill. It is not like the legislation being considered by the House of Representatives that will cost up to an additional $50 billion to reauthorize the CHIP program over the next 5 years.

In my opinion, the Senate version of this legislation is the better deal for the American people, and it is my hope that my colleagues who disagree will take one more look at this legislation.

I urge my colleagues to support the motion to proceed to this bill.

I hope in the final analysis, once we do proceed, our colleagues will vote for the bill because it is the right thing to do.

How much time do we have remaining on both sides?

The PRESIDING OFFICER. The minority has 9½ minutes, and the majority has 6½ minutes.

Mr. HATCH. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I yield 4 minutes to the Senator from Rhode Island and ask unanimous consent that notwithstanding the quorum calls, I be recognized for 2 minutes immediately prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I thank Chairman BAUCUS and Ranking Member GRASSLEY and the distinguished Senator from Utah, Mr. HATCH, who have been so energetic in preserving, enhancing, and protecting this plan. Rhode Island has a significant role, going back to the days of John Chafee, whose name has been mentioned by Senator HATCH, and, of course, through Senator JACK REED, whose relentless advocacy for this program is a legend on this floor.

My time is very short, so I will speak to a very simple point and come back and speak more to the children's health issue later in the debate.

It strikes me, as a new legislator, that legislating is about choices. The distinguished Senator from Utah said this bill is expensive, but it is the right thing to do. I would like to show two charts to help illustrate the expense in some context.

This is a chart which illustrates the additional cost we are talking about for children's health care in America, the subject we are debating in these increments, the increase over the next 3 years. The chart compares it to the cost to all of us of the Bush tax cuts going to the 1 percent of the richest Americans. So is it expensive to spend $2.1 billion on children's health care in 2008? It probably is. And is it expensive to spend $5 billion on children's health care, increasing it in 2009? Is it expensive to spend $7.9 billion? It probably is. But this is an administration which is happy to spend $70 billion on the richest 1 percent of America in the same year that they are fighting about $2.1 billion to improve health care for children. They are willing to spend $72 billion in the following year and $82 billion after that. So in the context of comparing expense to doing the right thing, it is a little bit expensive, but is it ever the right thing, particularly in a world where we are judged by our choices.

Here is another demonstration of really the same principle. We are talking about a cost spread over 5 years to help America's children have health insurance. By comparison, the interest alone on the Federal debt George Bush ran up with his tax cuts to the rich, just the interest expense in the fiscal year 2007, is more than that. It is $46 billion. This administration is fighting about whether we should spend $35.2 billion over 5 years for children's health insurance, poor children's health insurance, versus the Gulf Stream gazillionaires' tax breaks.

If you look to the President for leadership, you don't find it. What you find in his budget is $5 billion across the whole period instead of 35, which, because of the increase in medical costs over that period, it has been estimated would throw a million American children off of health insurance.

What Chairman BAUCUS has done, what Ranking Member GRASSLEY has done, is work out a bipartisan compromise in the Senate that is the right thing to do and not all that expensive.

I congratulate them.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, I understand the Senator from Iowa wishes to yield back the remainder of his time, and I understand that under the order, I have 2 minutes remaining.

Mr. GRASSLEY. I yield back the remainder of my time.

Mr. BAUCUS. I have 2 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Madam President, there are a lot of points one could make at this juncture. We will have time tomorrow and in the next several days. The Senate is about to vote on the motion to proceed to the bill. I understand Senators on both sides of the aisle will support it.

It is important to be on the bill. There are differing views within this Chamber about how we get the reauthorization passed, but I don't think there is much disagreement that we need to do something. If we don't get to the bill, we are probably then not going to authorize the Children's Health Insurance Program, and that is going to mean a lot of kids are going to lose health insurance. So I urge Senators to vote to proceed to the bill. I understand the Senate will vote to proceed, and I think that is the right thing to do.

One point I want to make, in this very brief time, is there is some illusion by some Senators as to some States providing CHIP to families who are 400 percent of poverty, that somehow the Children's Health Insurance Program is going to not only help low-income kids but help high-income kids.

I understand that concern because it has been bandied about. But the fact is, no State currently covers their children at 400 percent of poverty. Only one State is thinking about it. That is New York. That State would have to get approval—either with a waiver by HHS or have their plan approved. I frankly doubt this current administration is going to agree to do that.

I also point out, of all the children in the country covered by CHIP, only 3,000 come from families above 300 percent of poverty. Only 3,000 children today come from families who are above 300 percent of poverty. Frankly, that is an ideal calculation. That is less than one-tenth of 1 percent of the 6.6 million kids who are covered. So a very small fraction of the children come from families who are above 300 percent of poverty. They all live in the State of New Jersey.

I might also add, those 3,000 children in New Jersey represent about 2.4 percent of the children covered by the Children's Health Insurance Program in that State—a very small percentage—and all these children pay $1,400 per year for their health care, which is a contribution of 2.2 percent of their family income. Most families pay three or four times that.

So this program—as the facts will show and the record will show—by no stretch of the imagination is a program that is going to help high-income kids. In fact, it is the opposite.

I urge Senators to vote to proceed to the health care bill.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 58, H.R. 976, the Small Business Tax Relief Act of 2007.

Harry Reid, Max Baucus, Bernard Sanders, Jeff Bingaman, Ted Kennedy, Maria Cantwell, B.A. Mikulski, Barbara Boxer, Daniel K. Inouye, Christopher Dodd, Patty Murray, Benjamin L. Cardin, Barack Obama, Kent Conrad, Dick Durbin, Ken Salazar, Blanche L. Lincoln, Jack Reed.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 976, an act to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Illinois (Mr. OBAMA), and the Senator from Rhode Island (Mr. REED) are necessary absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Kentucky (Mr. BUNNING), the Senator from Idaho (Mr. CRAIG), the Senator from Idaho (Mr. CRAPO), the Senator from South Carolina (Mr. DEMINT), the Senator from Nevada (Mr. ENSIGN), the Senator from South Carolina (Mr. GRAHAM), the Senator from New Hampshire (Mr. GREGG), the Senator from Florida (Mr. MARTINEZ) the Senator from Alaska (Ms. MURKOWSKI), the Senator from Alabama (Mr. SESSIONS), and the Senator Alabama (Mr. SHELBY).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

The PRESIDNG OFFICER. Are there are any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 80, nays 0, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—80

Akaka	Dorgan	Menendez
Alexander	Durbin	Mikulski
Allard	Enzi	Murray
Barrasso	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Grassley	Pryor
Bennett	Hagel	Reid
Bingaman	Harkin	Roberts
Bond	Hatch	Rockefeller
Boxer	Hutchison	Salazar
Brown	Inhofe	Sanders
Burr	Inouye	Schumer
Byrd	Isakson	Smith
Cantwell	Kennedy	Snowe
Cardin	Klobuchar	Specter
Carper	Kohl	Stabenow
Casey	Kyl	Stevens
Chambliss	Landrieu	Sununu
Coburn	Lautenberg	Tester
Cochran	Leahy	Thune
Coleman	Levin	Vitter
Collins	Lieberman	Voinovich
Conrad	Lott	Warner
Corker	Lugar	Webb
Cornyn	McCain	Whitehouse
Dole	McCaskill	Wyden
Domenici	McConnell	

NOT VOTING—20

Biden	Dodd	Martinez
Brownback	Ensign	Murkowski
Bunning	Graham	Obama
Clinton	Gregg	Reed
Craig	Johnson	Sessions
Crapo	Kerry	Shelby
DeMint	Lincoln	

The PRESIDING OFFICER. On this question, the yeas are 80, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANDERS). Without objection, it is so ordered.

CENTRAL AMERICAN FREE TRADE AGREEMENT

Mr. BROWN. Mr. President, 2 years ago this week the House of Representatives forced through the Central American Free Trade Agreement, the dysfunctional cousin of the job-killing trade agreement, NAFTA, the North American Free Trade Agreement. CAFTA expanded NAFTA into five Central American countries and the Dominican Republic despite widespread bipartisan opposition to it in the United States, in Central America, and in the Dominican Republic.

During the CAFTA debate, the largest ever bipartisan coalition was formed in opposition to CAFTA and in support of fair trade, a very different direction in our trade policy. A coalition of farmers, ranchers, cattlemen, small business men and women, labor groups, human rights organizations, consumer and environmental and faith groups connected the widespread opposition to NAFTA around the country, with Democrats and Republicans, were standing up to the President.

CAFTA passed but not on its merits. In the middle of the night, the vote was held open until enough arms were twisted to secure a win in the House of Representatives by only two votes. CAFTA passed by the slimmest margin of any trade agreement in the modern era. That was because of the overwhelming opposition by those of us who support fair trade. We forever changed the debate on trade.

Make no mistake, we want trade. As Senator DORGAN says, we want trade and plenty of it. However, 2 years after CAFTA, supporters of the failed NAFTA-like model still are trying to force through Congress more of the same—more job-killing trade agreements that hurt U.S. businesses and that exploit workers in developing nations, more fundamentally flawed agreements designed to protect multinational corporations, and big drug companies. They are protectionists all right; they protect large corporations, especially the large drug companies.

More trade agreements can send our trade deficit soaring and hemorrhaging U.S. jobs. In 1992, the year I first ran for the House of Representatives, our trade deficit was $38 billion. Last year, it exceeded $800 billion. From $38 billion, that is an increase of more than 20 times. The first President Bush said for every billion-dollar trade agreement or deficit, it translates into 13,000 jobs. You do the math on what an $800 billion trade deficit means.

CAFTA was passed by two votes. Since CAFTA passed 2 years ago this last week, how has it done so far? CAFTA proponents told us if it didn't pass, poverty would get worse in Central America; CAFTA would promote economic growth, curb the violence in Central America, and serve as a model for strengthening democracy. Let's look at the region 2 years later.

Violence and murders continue to silence the opposition to CAFTA throughout Central America. State violence was responsible for the death of several CAFTA demonstrators in Guatemala. Since 2001, more than 2,500 women and girls have been brutally murdered in Guatemala. Many work in factories built for export and make just a few dollars a week. The Guatemalan Government failed to bring those responsible to justice. And we reward that Government with a free-trade agreement. Four Guatemalan police confessed in the murder of three Salvadoran legislators whose crime was they opposed CAFTA. Despite the threats of violence, still thousands of people are protesting CAFTA in Central America.

CAFTA promoters also said the trade deal would strengthen labor rights. U.S. Trade Representative Zoellick told us:

> If CAFTA stumbles, labor rights in Central America will not be strengthened.

The reality is, there have been disturbing developments in the region, including the recent passage by the Honduran Government of a law to create ''exception zones'' that will allow foreign factories to pay less than the national minimum wage in the southern part of the country. The national minimum wage—think how low it is. It is only a few dimes an hour. This whole idea of a trade agreement is to lift up standards. That is what they say, but what they do is have an exception even from the low wages for foreign companies to come in and pay an even lower wage.

In Guatemala, forced laborers, most of whom are well under the age of 18, are coerced to work 10- to 14-hour days, 6 or 7 days each week.

In Nicaragua, the human rights ombudsman alleges that nearly half of the female employees working in free-trade zones had been subject to physical or sexual abuse.

Consistent with its history of repeating the same act and expecting different results, the administration now wants Congress to approve deals with Peru, Panama, Colombia, and South Korea—still using the failed NAFTA-CAFTA trade model. I think it was Albert Einstein who said the mark of insanity is doing the same thing over and over and over and expecting a different result. This President continues to try to push through trade agreements.

NAFTA failed. PNTR with China is causing a hemorrhaging of industrial jobs from Ohio, in Stubenville, Toledo, Dayton, Cleveland, Canton, Portsmouth—from all over our State. Yet the President continues to push these kinds of trade agreements with Peru, Panama, South Korea, and Columbia through Congress.

This fall, Congress will debate these new free-trade agreements, and this fall I look forward to working with my fair trade colleagues in the House and

Senate in changing our Nation's trade policy. It is clear that an overwhelming majority of the American people want a very different trade policy. It is clear that our communities, people all over my State of Ohio and all over this country understand that these trade policies have cost people their jobs, they have broken too many families, they have hurt too many communities, and they have depleted the manufacturing base in our country.

People want a different direction in trade. We want trade; we want more of it. We want trade under different rules. That is why we demand fair trade.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. SNOWE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. SNOWE. Mr. President, I wish to take this opportunity to speak today on behalf of the legislation that is pending before the Senate to provide health insurance to an estimated 3.2 million children in America who will undoubtedly stand to benefit from this legislation.

I wish to voice my strong support as a member of the Finance Committee for the Baucus-Grassley reauthorization of the State Children's Health Insurance Program. I also extend my congratulations to Chairman BAUCUS and Ranking Member GRASSLEY, as well as chairman and ranking member of the Health Care Subcommittee, Senator ROCKEFELLER and Senator HATCH, for their visionary leadership and tireless perseverance in crafting this package, which has received such broad bipartisan support on the committee—and hopefully on the floor as well—and never losing sight of the overarching goal of obtaining health insurance for uninsured children.

I can well recall in the Senate more than 5 years ago when Senators HATCH and KENNEDY originally authored the legislation that paved the way for this unprecedented program which was supported by the Federal Government in partnership with the States in recognizing that one of the most vulnerable populations in this country was left without health insurance. This really did engender strong support across the board in the Senate and in Congress, and in every State in the country it has been remarkably successful. That is why I think that record of experience should bode well for the passage of this legislation.

As many of my colleagues know, Senator ROCKEFELLER and I introduced separate SCHIP legislation earlier this year, a bill that is cosponsored by more than 22 Members of this body. Many of the elements of that legislation have been incorporated into the legislation that is pending before us today.

Although there are some key components that are absent, I think overall the core issues that are so essential to bolstering a strong program for the future have been inserted in this legislation.

This is a strong bipartisan bill, authored in a bipartisan fashion, and was reported out of the Finance Committee with an overwhelmingly strong support with a 17-to-4 bipartisan vote. Time and again, we talk about the value of setting partisan politics aside and working together to produce solutions for the problems confronting the American people. If there is ever a time to turn our words into action, that time is now.

So the legislation today, while neither perfect nor ideal, represents a strong consensus in response to a growing epidemic in our Nation today, which is a lack of health insurance among working Americans of limited means.

As many of my colleagues are aware, the SCHIP program is not for children below the poverty line. They are already covered by Medicaid. Rather, SCHIP provides fallback health coverage for children of working men and women above the poverty line who nevertheless have been unable to obtain even basic health care for their families, most often because of lack of health coverage at work and the prohibitively expensive cost of individual policies on the private market. In fact, nearly 90 percent of the uninsured children come from families where at least one parent is working and in households earning less than $40,000 per year, which is 200 percent of poverty, and fewer than half are offered employer-sponsored health insurance at work. This is a 9-percent drop since 1997. So, obviously, that is moving in a different direction, unfortunately, and that is because of the prohibitive costs that have been associated with health insurance plans recently.

For many working families struggling to obtain health care benefits even accessible to them, the costs are moving further and further out of their reach. The anguish of those who work hard to make ends meet yet still cannot afford to pay for health coverage for their children is truly devastating. Parents without access to affordable health insurance for their children live in constant anxiety. They face decisions no parent would ever want to have to confront as to whether their child is really sick enough to go to a doctor. They worry every day about their children doing simple activities, worrying because they can ill afford the consequences of a broken arm or a sprained ankle. Their only alternatives is to ratchet up their credit card balances, often irrespective of mounting debt. That is why this SCHIP program has been such a saving grace for so many families. It has been the one remarkable program which has led to a substantial reduction in the number of uninsured.

Some may say that $35 billion over 5 years, which is the estimated cost of this program, will only cover an additional 3.2 million children—that it will cost $2,188 per child. But I happen to believe this is just further illustration of how health care costs continue to spiral out of control. The staggering cost of an individual policy with reasonable coverage is a reality families without health insurance confront every day.

Today, the income eligibility for the Children's Health Insurance Program in my State of Maine is 200 percent of poverty, $41,300 per family of four. An uninsured parent who wants to buy coverage for their child on the individual market with a $250 deductible and 20-percent coinsurance can expect to pay $8,777 a year. This should hardly be surprising given that a family of four seeking to purchase a health insurance plan on the individual market will typically pay in excess of $24,000 per year. That is $24,000 per year. So when people talk about the fact that this is going to cost $35 billion for 3.2 million children, that is a cost of $2,188, a price that no individual, no family could possibly hope to obtain to provide health insurance for their family. That is why this Children's Health Insurance Program is so essential and critical to working families.

In 1998, a year after Congress passed this program, 14 percent of children in Maine were uninsured. Within 5 years, the number of uninsured in Maine dropped to 7 percent and has remained at that level. This is, at the same time, a dramatic improvement in health coverage as well as a definitive statement that a great deal more work remains if we are to address the critical issues of affordability and accessibility of health insurance, especially as they relate to health care for our children.

That is why I am so pleased that the Baucus-Grassley bill before us provides a significant increase in Federal investment in the Children's Health Insurance Program beyond the reauthorization of the status quo because States not only require sufficient Federal funding to ensure that children currently enrolled in the SCHIP program do not lose coverage and become uninsured, but they also need additional funding to enroll more uninsured children.

Most critically, this legislation increases the Children's Health Insurance Program coverage to children in households earning up to 300 percent of poverty level. That was one of the central pieces of the legislation Senator ROCKEFELLER and I introduced earlier this year. It also adopts another key Rockefeller-Snowe component by ensuring coverage for pregnant women—a long overdue upgrade in the program that rightfully has gained broad support in this Chamber.

I believe the Finance Committees's approach to SCHIP is a balanced, carefully considered package worthy of the Senate's support. I wish to address

some of the opposition that has arisen to this bill because I think it is important to address some of these comments and complaints.

While I acknowledge my colleagues' sincerity in searching for solutions to our overall national uninsured program and I, in fact, support some of the proposals they offer, I must assert that now is neither the time nor the place for attempting to move these legislative proposals. With the September 30 expiration date on SCHIP fast approaching, we simply must take care of children first.

First, we heard the unfortunate veto threat issued by the White House, and I am dismayed by this stance because it seriously misjudges the concern Americans have about access to health care, especially for children and especially for this program.

Year after year, poll after poll affirms that access to affordable health care is the No. 1 domestic priority of Americans. Moreover, in a March New York Times/CBS News poll, 84 percent of Americans surveyed said that they supported expanding the Children's Health Insurance Program to cover all uninsured children. That was 84 percent of the American people, obviously across the political spectrum. By its very nature, it includes Republicans, Independents, as well as Democrats. A similar majority said they thought the lack of health insurance for many children was a very serious problem for this country. So to stand in the way of these efforts which are presented to the Children's Health Insurance Program demonstrates a stark disregard for the wishes of the American people.

Let there be no mistake, I think the public would hold us all accountable if we failed to reauthorize this program but also to make future investments in this program. I think undeniably the problem deserves to be recognized.

Some of my colleagues will say the SCHIP reauthorization is the first step toward Government-run health care and that we will substitute public coverage for private insurance. This is patently untrue, especially because most Medicaid and SCHIP beneficiaries receive coverage through the private plans that contract with their States. For instance, 73 percent of the children enrolled in Medicaid receive most or all of their health care services through a managed care plan. Far from scaling back private coverage, this bill actually shores up employer-based coverage by giving States the option to subsidize employer-sponsored group health care for families for whom coverage is cost prohibitive. Moreover, the bill targets incentive payments only to enrollment of low-income children under 200 percent of poverty, which is, as I said earlier, $41,300 for a family of four, who are least likely to have access to private coverage in the first place.

Some others will argue that SCHIP could reduce or eliminate coverage for adults, especially childless adults. Although I believe that coverage for adults can have a clear benefit for children, both in terms of enrollment for children as well as the fact that health problems for a working parent can lead to economic insecurity for a family, I recognize the opinion of those who desire to place a greater emphasis on covering children, and that is why this compromise legislation phases out coverage of adults.

I find it interesting, if not somewhat contradictory—I know the administration has been very vocal about the cost and scope of the legislation before us. But this is the same administration which has granted the State waivers to allow States to cover adults for the past 6½ years and just 2 months ago renewed waivers for adult coverage. Clearly, the trend from the administration was to grant State waivers recognizing the importance of insuring parents of uninsured children because, as we have seen time and time again, if a parent is insured, more likely the child will be insured as well and be part of the SCHIP program.

Others may argue that the cost of this legislation is too high, given that the baseline program is $25 billion. But I also would respond that the $35 billion that is placed in this bill is $15 billion below the amount we provided in the budget resolution and fully offset. This is a direct product of the negotiations that occurred within the Finance Committee to reach a compromise and consensus across the political aisle, and I applaud them for the efforts they made. We know the legislation before us will insure 3.2 million. There is probably at least another 5 or 6 million children who may be uninsured. So we haven't addressed the problem in its entirety.

I wish we could have gone the extra mile to do everything we could to reach all the children who are uninsured in America, but I believe this bill is the opportunity to push forward with the most important piece we can at this moment in time in reaching a consensus to address at least 3.2 million because it is $35 billion in addition to those who are already covered, which is an additional $25 billion.

I know some would suggest this is another way of advancing comprehensive health care reform. I think there is no question we all desire to address the most grappling domestic problem we face, and that is the issue of the uninsured, of which there are more than 47 million Americans who now lack health insurance. That is certainly the most preeminent domestic policy issue of our time. But if we cannot begin with insuring our children, how can we possibly address the larger population? This is a problem we must tackle, undeniably. Unfortunately, many of the proposals that are being discussed have not obviously been vetted yet for consideration through the committee process, and I am concerned that ultimately it will affect this legislation before the Senate.

For example, I have heard that possibly the Small Business Health Insurance Plan will be attached to the pending legislation. As the former chair and now ranking member of the Committee on Small Business, I have long championed and been an advocate for the Small Business Health Insurance Plan. In fact, I crafted my own legislation more than 4 years ago, so it is an issue I have advocated for a considerable period of time and clearly one that needs to be addressed. But I would hope we could consider that as a separate component. The fact is it deserves to stand alone in consideration, as we tried to do last year but, unfortunately, could not reach the 60 votes necessary to overcome the cloture vote.

There is no question we ought to address that particular issue. At this moment in time, since we are nearing a deadline of September 30 with respect to the reauthorization of SCHIP, I think it is important we stay on track in the Senate and address the other issues related to health insurance at a later point in time. I hope Members of the Senate will set aside those amendments and give their strong support to this legislation.

I think there is no question we have to work to achieve a consensus on health care as a larger question, without a doubt, as we were able to accomplish on this legislation which provides health insurance for uninsured and insured children in America. But I hope my colleagues will see the true benefits of this legislation and support this package that is before us today. I hope we will not be sidetracked with additional amendments, as I said, whether it is on the Small Business Health Insurance Plans or providing for tax credits or health savings accounts. I do think all those issues are critical and should be addressed in their entirety but not as part of this legislation that ultimately could erode the bipartisan support that has been developed for this critical piece of legislation before us today.

I hope we will pass this bill and allow the States to increase the SCHIP eligibility up to 300 percent, which will be the first time that has been allowed by the Federal legislation. I think the data available demonstrates that drawing the eligibility line at 300 percent of poverty will help maximize the number of children we assist with this legislation. In Maine alone, for example, approximately three-quarters of uninsured children are from families with incomes at 300 percent of poverty or below.

The Baucus-Grassley bill also provides States the option to provide health coverage for pregnant women, a policy that has garnered longstanding, well-deserved bipartisan support. The fact is, proper prenatal care can reduce the likelihood of having a preterm baby, and routine care for pregnant women can detect health conditions affecting the mother as well as the baby. Sometimes these medical problems can

be addressed before the child is born. So I think this is an important adjunct to this legislation.

I am also pleased the bill includes the Lincoln-Snowe amendment that was adopted in the committee on the development of pediatric quality measures aimed at reducing preterm births as well. Our country has one of the highest rates of infant mortality among industrialized nations. That is a disgrace in a land with our wealth and our means. Coverage of pregnant women, coupled with quality measures on reducing preterm birth, will help turn around those unacceptable statistics. Investing in good prenatal care saves money too. According to the March of Dimes, health care costs for babies born prematurely are nearly 15 times greater than for full-term babies.

I hope the Senate will provide strong bipartisan support for this legislation. I think we should recognize the success of this program and what it has managed to accomplish over the last 5 years with strong Federal support. I think it is an ideal partnership with the States, which have been extremely successful and effective in the way they have administered this program.

What is also important about this legislation is that we revised the formula so we do not penalize States that do an excellent job of reaching out and continuing to insure more and more children. We don't want to reward just the status quo. So we revised the formula to take into account the States' experiences and how they have been able to succeed in covering low-income, uninsured children so they do not see their allotment drop as a result of being so successful.

That is the way it has worked in the past. If, for example, States have been very good at being able to insure many children in their States, many more than maybe some of the other States, they would lose part of their funding. So we have revised the formula so there isn't this perverse disincentive to cover more children. We should recognize success and make sure it is rewarded.

Finally, I was disappointed, and I know the Chair has been a strong advocate for this as well, that we were not able to provide dental coverage for children. It is something I attempted in the committee, and it was included as part of the Rockefeller-Snowe legislation to address this issue. The chairman of the committee, along with the ranking member, agreed to include a $200 million Federal grant that is specifically targeted to States to boost their coverage of dental benefits. I am disappointed we don't have a guaranteed dental benefit because I think it is long overdue and is something we should recognize is a critical dimension to health insurance.

We have known of so many examples of tragedies that have occurred and one most recently in Maryland, where a young boy died because he had an abscessed tooth. An extraction would have cost $100. He ultimately died. They spent more than $200,000 trying to save his life, but, unfortunately and tragically, they did not. Think about what might have been had he had dental coverage—simple dental coverage.

Hopefully, we will be able to achieve some kind of support for a compromise. I know I am not satisfied with the fact that we don't have that guaranteed benefit, but I am pleased we do have a $200 million Federal grant as part of this program and that will be the beginning of that process of providing dental benefits. I do think, ultimately, we need to incorporate it as part of the underlying and fundamental package of health insurance.

I thank the Chair and Members of the Senate for the opportunity to address this issue. I believe that in the long run we are taking a critical stand toward insuring more children in this country, and, hopefully, we can do more. I think the package before us is fiscally responsible. It provides for an offset with a 61-cent increase in the tobacco tax. I know there are those who do not support such a tax increase, but nevertheless, the 61-cent increase will help not only to completely offset the additional cost of this program of $35 billion, but it also will prevent nearly 1.9 million children from ever starting to smoke, it will help nearly 1.2 million adult smokers quit, it will prevent more than 900,000 smoking-caused deaths, and it will produce $43.9 billion in long-term health care savings. So even if an increase raises money in the short-term but levels off because, more importantly, fewer people will smoke, that is a win-win situation.

I hope the Senate will look to the strong 17 to 4 vote coming out of the Finance Committee, which is indicative of the broad bipartisan support. Also, it is an example of what we can accomplish when we set aside our political differences in order to do the right thing for children in America. Compromise is essential, and that certainly has been the hallmark of this effort.

We are poised to see a renewal of one of our most uniquely successful initiatives when it comes to a health insurance program for children. This will send a very strong signal to hard-working American families whom the Federal Government is prepared to provide the support to help their children and to help their families as they struggle to meet one of the basic necessities of their life. More importantly, I hope, we will reach the time when we will address the larger question of the uninsured in America because it is long overdue and is a vital necessity for millions and millions of Americans.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

IMMIGRATION

Mr. SPECTER. Madam President, I begin by thanking the staff for staying a few extra minutes to enable me to come back to the floor to make a short statement.

I have sought recognition to speak about a revised reform bill on immigration. In the course of the past 3 years, the Senate has spent a great deal of time on trying to reform our immigration system: to begin to fix the broken borders; to add more Border Patrols; to undertake some necessary fencing; to add drones; to undertake employer verification by utilizing identification which now can provide, with certainty, whether an immigrant is legal or illegal; to take care of a guest worker program to fill employment needs in the United States; and to deal with the 12 million undocumented immigrants.

During the 109th Congress, when I chaired the Judiciary Committee, we reported out a bill. It came to the floor, and after considerable debate it was passed. The U.S. House of Representatives passed legislation directed only at border patrol and employer verification, and for a variety of reasons we could not reconcile the bills and enact legislation.

This year a different procedure was undertaken: to have a group of Senators who had been deeply involved in the issue before craft a bill. It did not go through committee, and, as I said earlier on the floor, I think it probably was a mistake because the committee action of hearings and markups and refinement works out a lot of problems. At any rate, as we all know, after extensive debate, the bill went down. We could not get cloture to proceed, and it was defeated.

It was defeated for a number of reasons. But I believe the immigration issue is one of great national concern—great importance—and ought to be revisited by the Congress and that ought to be done at as early a time as possible.

We have a very serious problem with people coming across our borders—a criminal element, and a potential terrorist element. The rule of law is broken by people who come here in violation of our laws. We have continuing problems from the 1986 legislation that employer verification is not realistic because there is no positive way of identification.

No matter how high the borders or the value of border patrol, it is not possible to eliminate illegal immigration if the magnet is present. The legislation I will be putting in as part of the RECORD at the conclusion of my remarks is a draft of suggested proposals to be considered by the Senate. There are two major changes which have been undertaken.

Much as I dislike to, I have eliminated the automatic path to citizenship but instead deal with the fugitive status of the undocumented immigrants, the 12 million, and eliminate that fugitive status. Whether it is categorized as permanent legal resident or some other category, as a matter of nomenclature it can be worked out.

But the principal concern has not been the citizenship, although it is a desirable factor to try to integrate the 12 million into our society. But the principal concern has been that when an undocumented illegal immigrant sees a policeman on the street, there is fear of apprehension and being rounded up and deported, or the undocumented illegal is at the mercy of an unscrupulous employer who will take advantage of them and they cannot report to the police the treatment or a violation of law by an employer because they are fearful of being arrested and deported. In many places you cannot rent an apartment or undertake other activities. So I think eliminating the fugitive status is a major improvement.

The other significant change is to not tamper with or change family unification but to leave it as it is now. We had come up with, with the bill which was defeated, an elaborate point system for immigration. It was our best effort but, candidly, it turned out to be half-baked. It did not go through the hearing process to hear from experts. It did not have that kind of refinement and raised a lot of problems. That could be revisited at a later date. I have worked with the so-called interest groups representing immigration interests and have had what I consider to be a relatively good response.

I do not want to characterize it or put words in anybody's mouth. There is a certain reluctance to make any more concessions because concessions were made last year and the bottom fell out. So they made an inquiry, understandably so, that there be some realistic chance of getting the bill passed if they are to give up a path to citizenship.

I have undertaken to talk to many of my colleagues, Senators who opposed the bill, to get a sense from them as to whether, with the automatic path to citizenship out, and dealing only with the fugitive status, that there might be some greater willingness to find an accommodation and deal with the issues.

With respect to citizenship, even under the legislation that was defeated, there would not be an opportunity for citizenship until at least 8 years have passed, to take care of the backlog, and then another 5 years to work out the 12 million undocumented immigrants. So the citizenship, even under the bill which was defeated, was not something which was going to be imminent.

We have seen local governments and State governments trying to deal with the issue. Reports are more than 100 laws have been passed and ordinances enacted which would deal with the immigration problem. They cannot do it on a sensible basis. Last week the U.S. District Court for the Middle District of Pennsylvania handed down an opinion that the city of Hazelton, notwithstanding the understandable efforts by the mayor, program was not constitutional; that under our laws, the answer has to come from the Congress.

We have seen a lot of unrest on the issue. The front page of the Washington Post the day before yesterday had a report about groups of immigrants feeling that they had been mistreated. There was an uneasiness on all sides, uneasiness by people who are angry about the violation of our borders, by immigrants who think they are not being fairly treated, and a grave concern about the availability of workers on our farms across America, concerns of the hotel industry and landscapers and restaurateurs about the adequacy of our labor force. So there is no doubt that this is a very significant issue.

Last week I circulated to my 99 colleagues a letter, and one page summarizing the study bill—I will call it a study bill.

I ask unanimous consent that the text of the draft proposal and the one-page letter circulated to all other Senators be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. In conclusion, I emphasize that I am inviting suggestions and comments for improving the bill. The one view that I do have, very strongly, is that it is our pay grade to deal with this issue. Only the Congress can deal with the immigration problem, and it is a matter of tremendous importance that we do so. We obviously cannot satisfy everyone, but I invite analysis, criticism, and modification.

I see my distinguished colleague from Vermont, one of my distinguished colleagues from Vermont, awaiting recognition.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

DEAR

I believe it is possible to enact comprehensive immigration reform in this Congress, perhaps even in this calendar year, if we make two significant changes in the bill we recently had on the floor.

First, a new bill should eliminate the automatic path to citizenship for the approximately 12 million undocumented immigrants. Instead, we should just eliminate the fugitive status for the 12 million so that they would not be fearful every time they see a policeman, be protected from unscrupulous employers who threaten to turn them in if they don't do the employer's bidding, and be free to do things like rent apartments in cities which now preclude that. From soundings I have taken from many senators, that should take the teeth out of the amnesty argument, which was the principal reason for the defeat of the last bill.

Second, we should not tamper with the current provisions on family unity with the elaborate point system which was insufficiently thought through. If that is to be ultimately accomplished, we need hearings and a more thoughtful approach.

Third, although not indispensable, I believe we should provide more green cards to assist the hitech community.

The enclosed draft bill covers these three changes and also includes the guest worker program, the increased border security and enhanced employer verification in the last bill.

Because it will be easier to get real border security if we deal with the 12 million undocumented immigrants, I think this proposal presents an alternate and plausible path to achieve comprehensive immigration reform now.

I have discussed this proposal with the senators who were part of the core negotiating group and with the relevant interest groups and have received a generally favorable response and, in many cases, an enthusiastic response. Similarly, in discussing the proposed bill with the dissenters, I have heard no strenuous adverse response so I believe it is worthy of a repeat effort. Although the defeat of the bill on the Senate floor was a major disappointment, I think that we proponents of comprehensive immigration reform have significant momentum and these changes, perhaps supplemented by other modifications, could put us over the top.

Sincerely,

ARLEN SPECTER.

SECTION 1. EFFECTIVE DATE TRIGGERS.

(a) IN GENERAL.—With the exception of section 601 of this Act, the provisions of subtitle C of title IV, and the admission of aliens under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by title IV, the programs established by title IV shall become effective on the date that the Secretary submits a written certification to the President and the Congress, based on analysis by and in consultation with the Comptroller General, that each of the following border security and other measures are established, funded, and operational:

(1) OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER WITH MEXICO.—The Secretary of Homeland Security has established and demonstrated operational control of 100 percent of the international land border between the United States and Mexico, including the ability to monitor such border through available methods and technology.

(2) STAFF ENHANCEMENTS FOR BORDER PATROL.—The United States Customs and Border Protection Border Patrol has hired, trained, and reporting for duty 20,000 full-time agents as of the date of the certification under this subsection.

(3) STRONG BORDER BARRIERS.—There has been—

(A) installed along the international land border between the United States and Mexico as of the date of the certification under this subsection, at least.—

(i) 300 miles of vehicle barriers;

(ii) 370 miles of fencing; and

(iii) 105 ground-based radar and camera towers; and

(B) deployed for use along the international land border between the United States and Mexico, as of the date of the certification under this subsection, 4 unmanned aerial vehicles, and the supporting systems for such vehicles.

(4) CATCH AND RETURN.—The Secretary of Homeland Security is detaining all removable aliens apprehended crossing the international land border between the United States and Mexico in violation of Federal or State law, except as specifically mandated by Federal or State law or humanitarian circumstances, and United States Immigration and Customs Enforcement has the resources

to maintain this practice, including the resources necessary to detain up to 31,500 aliens per day on an annual basis.

(5) WORKPLACE ENFORCEMENT TOOLS.—In compliance with the requirements of title III of this Act, the Secretary of Homeland Security has established, and is using, secure and effective identification tools to prevent unauthorized workers from obtaining employment in the United States. Such identification tools shall include establishing—

(A) strict standards for identification documents that are required to be presented by the alien to an employer in the hiring process, including the use of secure documentation that—

(i) contains—

(I) a photograph of the alien; and

(II) biometric data identifying the alien; or

(ii) complies with the requirements for such documentation under the REAL ID Act (Public Law 109–13; 119 Stat. 231); and

(B) an electronic employment eligibility verification system that is capable of querying Federal and State databases in order to restrict fraud, identity theft, and use of false social security numbers in the hiring of aliens by an employer by electronically providing a digitized version of the photograph on the alien's original Federal or State issued document or documents for verification of that alien's identity and work eligibility.

(6) PROCESSING APPLICATIONS OF ALIENS.—The Secretary of Homeland Security has received, and is processing and adjudicating in a timely manner, applications for conditional nonimmigrant status under title VI of this Act, including conducting all necessary background and security checks required under that title.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the border security and other measures described in subsection (a) shall be completed as soon as practicable, subject to the necessary appropriations.

(c) PRESIDENTIAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the requirements under subsection (a) are met, the President shall submit a report to Congress detailing the progress made in funding, meeting, or otherwise satisfying each of the requirements described under paragraphs (1) through (6) of subsection (a), including detailing any contractual agreements reached to carry out such measures.

(2) PROGRESS NOT SUFFICIENT.—If the President determines that sufficient progress is not being made, the President shall include in the report required under paragraph (1) specific funding recommendations, authorization needed, or other actions that are or should be undertaken by the Secretary of Homeland Security.

(d) GAO REPORT.—Not later than 30 days after the certification is submitted under subsection (a), the Comptroller General shall submit a report to Congress on the accuracy of such certification.

SEC. 2. IMMIGRATION SECURITY ACCOUNT.

Section 286 of the Immigration and Nationality Act is amended by adding at the end the following:

''(z) IMMIGRATION SECURITY ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Immigration Security Account'.

(2) SOURCE OF FUNDS.—Immediately upon enactment, $4,400,000,000 shall be transferred from the general fund of the Treasury to the Immigration Security Account.

(3) APPROPRIATIONS.—

(A) There are hereby appropriated such sums that are provided under subsection 2 to remain available until five years after enactment.

(B) These sums shall be available for the Secretary of Homeland Security to meet the trigger requirements set forth in title I, section 1, of this Act.

(C) To the extent funds are not exhausted pursuant to (b), they shall be available to the Secretary of Homeland Security for one or more of the following activities:

(i) Fencing and Infrastructure;

(ii) Towers;

(iii) Detention beds;

(iv) Employment Eligibility Verification System, including funds for expenditures under section 306 of this Act, relating to the State Records Improvement Grant Program;

(v) Implementation of programs authorized in titles IV and VI; and

(vi) Other Federal border and interior enforcement requirements to ensure the integrity of programs authorized in titles IV and VI.

(4) TRANSFERS.—The Secretary of Homeland Security shall have the authority to transfer amounts out of the Immigration Security Account as appropriate to carry out subsections (3)(b) and (3)(c) of this section.

(5) REPORTING.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary and Appropriations of the Senate a plan for expenditure of the funds under subsection 2 within 60 days of enactment of this Act, and update the plan annually, that——

(A) identifies one-time and on-going costs;

(B) identifies the level of funding for each program, project, and activity, and if that funding will supplement an appropriated program, project, or activity;

(C) identifies the amount of funding to be obligated in each fiscal year, by program, project, and activity;

(D) includes milestones for completion of each identified program, project, or activity; and

(E) demonstrates how activities will further the goals and objectives of this Act.

(6) NOTIFICATIONS.—The Secretary of Homeland Security shall notify the Committees on Judiciary and Appropriations of the Senate 15 days prior to reprogramming funds from the original allocation or transferring funds out of the Immigration Security Account.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

SEC. 101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

(1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty CBP officers and provide appropriate training, equipment, and support to such additional CBP officers.

(2) INVESTIGATIVE PERSONNEL.—

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking '800' and inserting '1000'.

(B) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(3) DEPUTY UNITED STATES MARSHALS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that assist in matters related to immigration.

(4) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) IN GENERAL.—The Commissioner of United States Customs and Border Protection, in conjunction with the Secretary of Defense or a designee of the Secretary of Defense, shall establish a program to actively recruit members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who have elected to separate from active duty.

(B) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Commissioner shall submit a report on the implementation of the recruitment program established pursuant to subparagraph (A) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1) of subsection (a).

(2) DEPUTY UNITED STATES MARSHALS.—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a)(3).

(3) BORDER PATROL AGENTS.—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734) is amended to read as follows:

''SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

''(a) ANNUAL INCREASES.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active duty border patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by not less than—

''(1) 2,000 in fiscal year 2007;

''(2) 2,400 in fiscal year 2008;

''(3) 2,400 in fiscal year 2009;

''(4) 2,400 in fiscal year 2010;

''(5) 2,400 in fiscal year 2011; and

''(6) 2,400 in fiscal year 2012.

''(b) NORTHERN BORDER.—In each of the fiscal years 2008 through 2012, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.''.

(c) SHADOW WOLVES APPREHENSION AND TRACKING.—

(1) PURPOSE.—The purpose of this subsection is to authorize the Secretary, acting through the Assistant Secretary of Immigration and Customs Enforcement (referred to in this subsection as the 'Secretary'), to establish new units of Customs Patrol Officers (commonly known as 'Shadow Wolves') during the 5-year period beginning on the date of enactment of this Act.

(2) ESTABLISHMENT OF NEW UNITS.—

(A) IN GENERAL.—During the 5†year period beginning on the date of enactment of this Act, the Secretary is authorized to establish within United States Immigration and Customs Enforcement up to 5 additional units of

Customs Patrol Officers in accordance with this subsection, as appropriate.

(B) MEMBERSHIP.—Each new unit established pursuant to subparagraph (A) shall consist of up to 15 Customs Patrol Officers.

(3) DUTIES.—The additional Immigration and Customs Enforcement units established pursuant to paragraph (2)(A) shall operate on Indian reservations (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)) located on or near (as determined by the Secretary) an international border with Canada or Mexico, and such other Federal land as the Secretary determines to be appropriate, by—

(A) investigating and preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) carrying out such other duties as the Secretary determines to be necessary.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2008 through 2013.

SEC. 102. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the borders of the United States.

(b) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a).

SEC. 103. INFRASTRUCTURE.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subsection (a), by striking 'Attorney General, in consultation with the Commissioner of Immigration and Naturalization,' and inserting 'Secretary of Homeland Security'; and

(2) in subsection (b)—

(A) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

''(1) FENCING NEAR SAN DIEGO, CALIFORNIA.—In carrying out subsection (a), the Secretary shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.''.

(C) in paragraph (2), as redesignated—

(i) in the header, by striking 'SECURITY FEATURES' and inserting—'ADDITIONAL FENCING ALONG SOUTHWEST BORDER'; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

''(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

''(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

''(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

''(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

''(C) CONSULTATION.—

''(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

''(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

''(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

''(II) affect the eminent domain laws of the United States or of any State.

''(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.'; and

(D) in paragraph (5), as redesignated, by striking 'to carry out this subsection not to exceed $12,000,000' and inserting 'such sums as may be necessary to carry out this subsection'.

SEC. 104. PORTS OF ENTRY.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Public Law 104–208, is amended by the addition, at the end of that section, of the following new subsection:

''(e) CONSTRUCTION AND IMPROVEMENTS.—The Secretary is authorized to—

''(1) construct additional ports of entry along the international land borders of the United States, at locations to be determined by the Secretary; and

''(2) make necessary improvements to the ports of entry.''.

Subtitle B—Other Border Security Initiatives

SEC. 111. BIOMETRIC ENTRY-EXIT SYSTEM.

(a) COLLECTION OF BIOMETRIC DATA FROM ALIENS ENTERING AND DEPARTING THE UNITED STATES.—Section 215 (8 U.S.C. 1185) is amended—

(1) by redesignating subsection (c) as subsection (g);

(2) by moving subsection (g), as redesignated by paragraph (1), to the end; and

(3) by inserting after subsection (b) the following:

''(c) The Secretary is authorized to require aliens entering and departing the United States to provide biometric data and other information relating to their immigration status.''.

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) (8 U.S.C. 1225 (d)) is amended by adding at the end the following:

''(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsections (a) and (b), immigration officers are authorized to collect biometric data from—

''(A) any applicant for admission or any alien who is paroled under section 212(d)(5), seeking to or permitted to land temporarily as an alien crewman, or seeking to or permitted transit through the United States; or

''(B) any lawful permanent resident who is entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C).''.

(c) COLLECTION OF BIOMETRIC DATA FROM ALIEN CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by adding at the end the following:

''(d) An immigration officer is authorized to collect biometric data from an alien crewman seeking permission to land temporarily in the United States.''.

(d) GROUNDS OF INADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (a)(7), by adding at the end the following:

''(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who fails or has failed to comply with a lawful request for biometric data under section 215(c), 235(d), or 252(d) is inadmissible.''; and

(2) in subsection (d), by inserting after paragraph (1) the following:

''(2) The Secretary may waive the application of subsection (a)(7)(C) for an individual alien or class of aliens.''.

(e) IMPLEMENTATION.—Section 7208 of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1365b) is amended—

(1) in subsection (c), by adding at the end the following:

''(3) IMPLEMENTATION.—In fully implementing the automated biometric entry and exit data system under this section, the Secretary is not required to comply with the requirements of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act) or any other law relating to rulemaking, information collection, or publication in the Federal Register.'; and

(2) in subsection (l)—

(A) by striking 'There are authorized' and inserting the following:

''(1) IN GENERAL.—There are authorized''; and

(B) by adding at the end the following:

''(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 and 2009 to implement the automated biometric entry and exit data system at all land border ports of entry.''.

SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS.

(a) IN GENERAL.—Section 758 of Title 18, United States Code, is amended to read as follows:

''SEC. 758. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS.

''(a) EVADING A CHECKPOINT.—Any person who, while operating a motor vehicle or vessel, knowingly flees or evades a checkpoint operated by the Department of Homeland Security or any other Federal law enforcement agency, and then knowingly or recklessly disregards or disobeys the lawful command of any law enforcement agent, shall be fined under this title, imprisoned not more than five years, or both.

''(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly or recklessly disregards or disobeys the lawful command of an officer of the Department of Homeland Security engaged in the enforcement of the immigration, customs, or maritime laws, or the lawful command of any law enforcement agent

assisting such officer, shall be fined under this title, imprisoned not more than two years, or both.

''(c) ALTERNATIVE PENALTIES.—Notwithstanding the penalties provided in subsection (a) or (b), any person who violates such subsection shall—

''(1) be fined under this title, imprisoned not more than 10 years, or both, if the violation involved the operation of a motor vehicle, aircraft, or vessel—

''(A) in excess of the applicable or posted speed limit,

''(B) in excess of the rated capacity of the motor vehicle, aircraft, or vessel, or

''(C) in an otherwise dangerous or reckless manner;

''(2) be fined under this title, imprisoned not more than 20 years, or both, if the violation created a substantial and foreseeable risk of serious bodily injury or death to any person;

''(3) be fined under this title, imprisoned not more than 30 years, or both, if the violation caused serious bodily injury to any person; or

''(4) be fined under this title, imprisoned for any term of years or life, or both, if the violation resulted in the death of any person.

''(d) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be punished in the same manner as a person who completes the offense.

''(e) FORFEITURE.—Any property, real or personal, constituting or traceable to the gross proceeds of the offense and any property, real or personal, used or intended to be used to commit or facilitate the commission of the offense shall be subject to forfeiture.

''(f) FORFEITURE PROCEDURES.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 of this title, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General. Nothing in this section shall limit the authority of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels under the Customs laws or any other laws of the United States.

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

''(1) The term 'checkpoint' includes, but is not limited to, any customs or immigration inspection at a port of entry.

''(2) The term 'lawful command' includes, but is not limited to, a command to stop, decrease speed, alter course, or land, whether communicated orally, visually, by means of lights or sirens, or by radio, telephone, or other wire communication.

''(3) The term 'law enforcement agent' means any Federal, State, local or tribal official authorized to enforce criminal law, and, when conveying a command covered under subsection (b) of this section, an air traffic controller.

''(4) The term 'motor vehicle' means any motorized or self-propelled means of terrestrial transportation.

''(5) The term 'serious bodily injury' has the meaning given in section 2119(2) of this title.''.

SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS COUNTRIES.

Section 236(a)(2) (8 U.S.C. 1226(a)(2)) is amended—

(1) by striking 'on';

(2) in subparagraph (A)—

(A) by inserting 'except as provided under subparagraph (B), upon the giving of a ' before 'bond'; and

(B) by striking 'or' at the end;

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by inserting after subparagraph (A) the following:

''(B) upon the giving of a bond of not less than $5,000 with security approved by, and containing conditions prescribed by, the Secretary or the Attorney General, if the alien—

''(i) is a national of a noncontiguous country;

''(ii) has not been admitted or paroled into the United States; and

''(iii) was apprehended within 100 miles of the international border of the United States or presents a flight risk, as determined by the Secretary of Homeland Security; or'.

SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED COMPARTMENT: EXPANDING THE DEFINITION OF CONVEYANCES WITH HIDDEN COMPARTMENTS SUBJECT TO FORFEITURE.

(a) IN GENERAL.—Section 1703 of title 19, United States Code is amended:

(1) by amending the title of such section to read as follows:

''SEC. 1703. SEIZURE AND FORFEITURE OF VESSELS, VEHICLES, OTHER CONVEYANCES AND INSTRUMENTS OF INTERNATIONAL TRAFFIC'';

(2) by amending the title of subsection (a) to read as follows:

''(a) Vessels, vehicles, other conveyances and instruments of international traffic subject to seizure and forfeiture'';

(3) by amending the title of subsection (b) to read as follows:

''(b) Vessels, vehicles, other conveyances and instruments of international traffic defined'';

(4) by inserting ', vehicle, other conveyance or instrument of international traffic' after the word 'vessel' everywhere it appears in the text of subsections (a) and (b); and

(5) by amending subsection (c) to read as follows:

''(c) Acts constituting prima facie evidence of vessel, vehicle, or other conveyance or instrument of international traffic engaged in smuggling 'For the purposes of this section, prima facie evidence that a conveyance is being, or has been, or is attempted to be employed in smuggling or to defraud the revenue of the United States shall be—

''(1) in the case of a vessel, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display light as required by law.

''(2) in the case of a vehicle, other conveyance or instrument of international traffic, the fact that a vehicle, other conveyance or instrument of international traffic has any compartment or equipment that is built or fitted out for smuggling.''.

(b) CLERICAL AMENDMENT.—The table of sections for Chapter 5 in title 19, United States Code, is amended by striking the items relating to section 1703 and inserting in lieu thereof the following:

''1703. Seizure and forfeiture of vessels, vehicles, other conveyances or instruments of international traffic.

''(a) Vessels, vehicles, other conveyances or instruments of international traffic subject to seizure and forfeiture.

''(b) Vessels, vehicles, other conveyances or instruments of international traffic defined.

''(c) Acts constituting prima facie evidence of vessel, vehicle, other conveyance or instrument of international traffic engaged in smuggling.''.

Subtitle C—Other Measures

SEC. 121. DEATHS AT UNITED STATES-MEXICO BORDER.

(a) COLLECTION OF STATISTICS.—The Commissioner of the Bureau of Customs and Border Protection shall collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

(1) the causes of the deaths; and

(2) the total number of deaths.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner of the Bureau of Customs and Border Protection shall submit to the Secretary a report that—

(1) analyzes trends with respect to the statistics collected under subsection (a) during the preceding year; and

(2) recommends actions to reduce the deaths described in subsection (a).

SEC. 122. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

(1) PROTECTED LAND.—The term 'protected land' means land under the jurisdiction of the Secretary concerned.

(2) SECRETARY CONCERNED.—The term 'Secretary concerned' means—

(A) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture; and

(B) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

(1) IN GENERAL.—To gain operational control over the international land borders of the United States and to prevent the entry of terrorists, unlawful aliens, narcotics, and other contraband into the United States, the Secretary, in cooperation with the Secretary concerned, shall provide—

(A) increased U.S. Customs and Border Protection personnel to secure protected land along the international land borders of the United States;

(B) Federal land resource training for U.S. Customs and Border Protection agents dedicated to protected land; and

(C) Unmanned Aerial Vehicles, aerial assets, Remote Video Surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States.

(2) COORDINATION.—In providing training for Customs and Border Protection agents under paragraph (l)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the mission of the National Park Service, the United States Fish and Wildlife Service, the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—The Secretary and Secretaries concerned shall develop an analysis of damage to protected lands relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) RECOMMENDATIONS.—The Secretary shall—

(1) develop joint recommendations with the National Park Service, the United States Fish and Wildlife Service, and the Forest Service for an appropriate cost recovery mechanism relating to items identified in subsection (c); and

(2) not later than one year from the date of enactment, submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), including the Subcommittee on National Parks of the Senate and the Subcommittee on National Parks, Recreation and Public Lands of the House of Representatives, the recommendations developed under paragraph (1).

(e) BORDER PROTECTION STRATEGY.—The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the United States in the manner that best protects the homeland, including—

(1) units of the National Park System;

(2) National Forest System land;

(3) land under the jurisdiction of the United States Fish and Wildlife Service; and

(4) other relevant land under the jurisdiction of the Department of the Interior or the Department of Agriculture.

SEC. 123. SECURE COMMUNICATION.

The Secretary shall, as expeditiously as practicable, develop and implement a plan to improve the use of satellite communications and other technologies to ensure clear and secure 2-way communication capabilities—

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations; and

(3) between all appropriate border security agencies of the Department and State, local, and tribal law enforcement agencies.

SEC. 124. UNMANNED AIRCRAFT SYSTEMS

(a) UNMANNED AIRCRAFT AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aircraft systems for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)—

(A) $178,400,000 for fiscal year 2008; and

(B) $276,000,000 for fiscal year 2009.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment which the Secretary may deploy along an international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The program developed under this subsection shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near an international border of the United States, in order to evaluate, for a range of circumstances—

(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of the utilization of such technologies.

(5) REPORT TO CONGRESS.—Not later than 180 days after implementing the program under this subsection, the Secretary shall submit a report to Congress regarding the program developed under this subsection. The Secretary shall include in the report a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a ''virtual fence'' along such international borders to provide a barrier to illegal immigration. Such program shall be known as the Integrated and Automated Surveillance Program.

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, the Integrated and Automated Surveillance Program is carried out in a manner that—

(A) the technologies utilized in the Program are integrated and function cohesively in an automated fashion, including the integration of motion sensor alerts and cameras, whereby a sensor alert automatically activates a corresponding camera to pan and tilt in the direction of the triggered sensor;

(B) cameras utilized in the Program do not have to be manually operated;

(C) such camera views and positions are not fixed;

(D) surveillance video taken by such cameras can be viewed at multiple designated communications centers;

(E) a standard process is used to collect, catalog, and report intrusion and response data collected under the Program;

(F) future remote surveillance technology investments and upgrades for the Program can be integrated with existing systems;

(G) performance measures are developed and applied that can evaluate whether the Program is providing desired results and increasing response effectiveness in monitoring and detecting illegal intrusions along the international borders of the United States;

(H) plans are developed under the Program to streamline site selection, site validation, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

(J) standards are developed under the Program to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify illegal border intrusions.

(3) REPORT TO CONGRESS.—Not later than 1 year after the initial implementation of the Integrated and Automated Surveillance Program, the Secretary shall submit to Congress a report regarding the Program. The Secretary shall include in the report a description of the Program together with any recommendation that the Secretary finds appropriate for enhancing the program.

(4) EVALUATION OF CONTRACTORS.—

(A) REQUIREMENT FOR STANDARDS.—The Secretary shall develop appropriate standards to evaluate the performance of any contractor providing goods or services to carry out the Integrated and Automated Surveillance Program.

(B) REVIEW BY THE INSPECTOR GENERAL.—The Inspector General of the Department shall timely review each new contract related to the Program that has a value of more than $5,000,000, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules. The Inspector General shall report the findings of such review to the Secretary in a timely manner. Not later than 30 days after the date the Secretary receives a report of findings from the Inspector General, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report of such findings and a description of any the steps that the Secretary has taken or plans to take in response to such findings.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

SEC. 126. SURVEILLANCE PLAN.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States.

(b) CONTENT.—The plan required by subsection (a) shall include the following:

(1) An assessment of existing technologies employed on the international land and maritime borders of the United States.

(2) A description of the compatibility of new surveillance technologies with surveillance technologies in use by the Secretary on the date of the enactment of this Act.

(3) A description of how the Commissioner of the United States Customs and Border Protection of the Department is working, or is expected to work, with the Under Secretary for Science and Technology of the Department to identify and test surveillance technology.

(4) A description of the specific surveillance technology to be deployed.

(5) Identification of any obstacles that may impede such deployment.

(6) A detailed estimate of all costs associated with such deployment and with continued maintenance of such technologies.

(7) A description of how the Secretary is working with the Administrator of the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles.

(c) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit

to Congress the plan required by this section.

SEC. 127. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) REQUIREMENT FOR STRATEGY.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.

(b) CONTENT.—The National Strategy for Border Security shall include the following:

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 136.

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at locations along the international land and maritime borders of the United States.

(3) A risk assessment for all United States ports of entry and all portions of the international land and maritime borders of the United States that includes a description of activities being undertaken—

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) to protect critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the legal requirements that prevent achieving and maintaining operational control over the entire international land and maritime borders of the United States.

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(6) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(7) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations regarding actions the Secretary can carry out to improve coordination with such authorities to enable border security and enforcement activities to be carried out in a more efficient and effective manner.

(8) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, privacy rights, and civil liberties, including an assessment of efforts to take into account asylum seekers, trafficking victims, unaccompanied minor aliens, and other vulnerable populations.

(9) A prioritized list of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(10) A description of ways to ensure that the free flow of travel and commerce is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(11) An assessment of additional detention facilities and beds that are needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States.

(12) A description of the performance metrics to be used to ensure accountability by the bureaus of the Department in implementing such Strategy.

(13) A schedule for the implementation of the security measures described in such Strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to carry out such measures, and a description of how such resources should be allocated.

(c) CONSULTATION.—In developing the National Strategy for Border Security, the Secretary shall consult with representatives of—

(1) State, local, and tribal authorities with responsibility for locations along the international land and maritime borders of the United States; and

(2) appropriate private sector entities, nongovernmental organizations, and affected communities that have expertise in areas related to border security.

(d) COORDINATION.—The National Strategy for Border Security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13, dated December 21, 2004.

(e) SUBMISSION TO CONGRESS.—

(1) STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress the National Strategy for Border Security.

(2) UPDATES.—The Secretary shall submit to Congress any update of such Strategy that the Secretary determines is necessary, not later than 30 days after such update is developed.

(f) IMMEDIATE ACTION.—Nothing in this section or section 111 may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.

SEC. 128. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Secretary to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) COMPONENTS OF REVIEW.—The review under subsection (a) shall include the following components:

(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how such curriculum has changed since September 11, 2001, and an evaluation of language and cultural diversity training programs provided within such curriculum.

(2) A review and a detailed breakdown of the costs incurred by the Bureau of Customs and Border Protection and the Federal Law Enforcement Training Center to train 1 new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2), of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar training programs provided by State and local agencies, nonprofit organizations, universities, and the private sector.

(4) An evaluation of whether utilizing comparable non-Federal training programs, proficiency testing, and long-distance learning programs may affect—

(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year;

(B) the per agent costs of basic training; and

(C) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.

SEC. 129. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2008, the Secretary shall—

(1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a).

SEC. 130. US-VISIT SYSTEM.

Not later than 6 months after the date of the enactment of this Act, the Secretary, in consultation with the heads of other appropriate Federal agencies, shall submit to Congress a schedule for—

(1) Equipping all land border ports of entry of the United States with the U.S.-Visitor and Immigrant Status Indicator Technology (US-VISIT) system implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a);

(2) developing and deploying at such ports of entry the exit component of the US-VISIT system; and

(3) making interoperable all immigration screening systems operated by the Secretary.

SEC. 131. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—Subject to the availability of appropriations, the Secretary shall provide all U.S. Customs and Border Protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the head of the Forensic Document Laboratory of the U.S. Immigration and Customs Enforcement.

(b) FORENSIC DOCUMENT LABORATORY.—The Secretary shall provide all U.S. Customs and Border Protection officers with access to the Forensic Document Laboratory.

(c) ASSESSMENT.—

(1) REQUIREMENT FOR ASSESSMENT.—The Inspector General of the Department shall conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory.

(2) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Inspector General shall submit to Congress the findings of the assessment required by paragraph (1).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

SEC. 132. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address—

(A) criminal activity that occurs in the jurisdiction of such agency by virtue of such agency's proximity to the United States border; and

(B) the impact of any lack of security along the United States border.

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2008 through 2012.

(3) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community—

(A) with a population of less than 50,000; and

(B) located no more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

(4) to cover operational costs, including overtime and transportation costs; and

(5) such other resources as are available to assist that agency.

(c) APPLICATION.—

(1) IN GENERAL.— Each eligible law enforcement agency seeking 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 reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

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

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term ''eligible law enforcement agency'' means a tribal, State, or local law enforcement agency—

(A) located in a county no more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

(B) located in a county more than 100 miles from any such border, but where such county has been certified by the Secretary as a High Impact Area.

(2) HIGH IMPACT AREA.—The term ''High Impact Area'' means any county designated by the Secretary as such, taking into consideration—

(A) whether local law enforcement agencies in that county have the resources to protect the lives, property, safety, or welfare of the residents of that county;

(B) the relationship between any lack of security along the United States border and the rise, if any, of criminal activity in that county; and

(C) any other unique challenges that local law enforcement face due to a lack of security along the United States border.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

(2) DIVISION OF AUTHORIZED FUNDS.—Of the amounts authorized under paragraph (1)—

(A) ⅔ shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B) ⅓ shall be set aside for areas designated as a High Impact Area under subsection (d).

(f) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.

(a) REQUIREMENT TO UPDATE.—Not later than January 31 of each year, the Administrator of General Services, in consultation with U.S. Customs and Border Protection, shall update the Port of Entry Infrastructure Assessment Study prepared by U.S. Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, on page 67) and submit such updated study to Congress.

(b) CONSULTATION.—In preparing the updated studies required in subsection (a), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(c) CONTENT.—Each updated study required in subsection (a) shall—

(1) identify port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented;

(2) include the projects identified in the National Land Border Security Plan required by section; and

(3) prioritize the projects described in paragraphs (1) and (2) based on the ability of a project to—

(A) fulfill immediate security requirements; and

(B) facilitate trade across the borders of the United States.

(d) PROJECT IMPLEMENTATION.—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order of priority assigned to each project under subsection (c)(3).

(e) DIVERGENCE FROM PRIORITIES.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

SEC. 134. NATIONAL LAND BORDER SECURITY PLAN.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary, after consultation with representatives of Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border, shall submit a National Land Border Security Plan to Congress.

(b) VULNERABILITY ASSESSMENT.—

(1) IN GENERAL.—The plan required in subsection (a) shall include a vulnerability assessment of each port of entry located on the northern border or the southern border.

(2) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

(A) to assist in conducting a vulnerability assessment at such port; and

(B) to provide other assistance with the preparation of the plan required in subsection (a).

SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall carry out a technology demonstration program to—

(1) test and evaluate new port of entry technologies;

(2) refine port of entry technologies and operational concepts; and

(3) train personnel under realistic conditions.

(b) TECHNOLOGY AND FACILITIES.—

(1) TECHNOLOGY TESTING.—Under the technology demonstration program, the Secretary shall test technologies that enhance port of entry operations, including operations related to—

(A) inspections;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) sensory devices;

(F) personal detection;

(G) decision support; and

(H) the detection and identification of weapons of mass destruction.

(2) DEVELOPMENT OF FACILITIES.—At a demonstration site selected pursuant to subsection (c)(2), the Secretary shall develop facilities to provide appropriate training to law enforcement personnel who have responsibility for border security, including—

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) DEMONSTRATION SITES.—

(1) NUMBER.—The Secretary shall carry out the demonstration program at not less than 3 sites and not more than 5 sites.

(2) SELECTION CRITERIA.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and can efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

(A) have been established not more than 15 years before the date of the enactment of this Act;

(B) consist of not less than 65 acres, with the possibility of expansion to not less than 25 adjacent acres; and

(C) have serviced an average of not more than 50,000 vehicles per month during the 1-year period ending on the date of the enactment of this Act.

(d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize a demonstration site described in subsection (c) to test technologies that enhance port of entry operations, including technologies described in subparagraphs (A) through (H) of subsection (b)(1).

(e) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each demonstration site under the technology demonstration program established under this section.

(2) CONTENT.—The report submitted under paragraph (1) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the U.S. Customs and Border Protection.

SEC. 136. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the U.S. Immigration and Customs Enforcement and the U.S. Customs and Border Protection of the Department and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

(b) CONTENT.—In developing the plan required by subsection (a), the Secretary shall consider—

(1) the interoperability of databases utilized to prevent human smuggling;

(2) adequate and effective personnel training;

(3) methods and programs to effectively target networks that engage in such smuggling;

(4) effective utilization of—

(A) visas for victims of trafficking and other crimes; and

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with foreign governments whose citizens are preyed on by human smugglers; and

(6) other measures that the Secretary considers appropriate to combating human smuggling.

(c) REPORT.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

(d) SAVINGS PROVISION.—Nothing in this section may be construed to provide additional authority to any State or local entity to enforce Federal immigration laws.

SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have the capacity to detain a combined total of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States subject to available appropriations.

(b) CONSTRUCTION OF OR ACQUISITION OF DETENTION FACILITIES.—

(1) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—The Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004, as amended by subsection (a), subject to available appropriations.

(2) USE OF ALTERNATE DETENTION FACILITIES.—Subject to the availability of appropriations, the Secretary shall fully utilize all possible options to cost effectively increase available detention capacities, and shall utilize detention facilities that are owned and operated by the Federal Government if the use of such facilities is cost effective.

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with subsection (a).

(4) DETERMINATION OF LOCATION.—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to enable the officers and employees of the Department to increase to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(c) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful aliens apprehended at the United States ports of entry or along the international land borders of the United States.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by striking 'may expend' and inserting 'shall expend'.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 138. UNITED STATES-MEXICO BORDER ENFORCEMENT REVIEW COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent commission to be known as the United States-Mexico Border Enforcement Review Commission (referred to in this section as the 'Commission').

(2) PURPOSES.—The purposes of the Commission are—

(A) to study the overall enforcement strategies, programs and policies of Federal agencies along the United States-Mexico border; and

(B) to make recommendations to the President and Congress with respect to such strategies, programs and policies.

(3) MEMBERSHIP.—The Commission shall be composed of 17 voting members, who shall be appointed as follows:

(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—

(i) 1 shall be a local elected official from the State's border region;

(ii) 1 shall be a local law enforcement official from the State's border region; and

(iii) 2 shall be from the State's communities of academia, religious leaders, civic leaders or community leaders.

(B) 2 nonvoting members, of whom—

(i) 1 shall be appointed by the Secretary;

(ii) 1 shall be appointed by the Attorney General; and

(iii) 1 shall be appointed by the Secretary of State.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Commission shall be—

(i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, crossborder trade and commerce or other pertinent qualifications or experience; and

(ii) representative of a broad cross section of perspectives from the region along the international border between the United States and Mexico;

(B) POLITICAL AFFILIATION.—Not more than 2 members of the Commission appointed by each Governor under paragraph (3)(A) may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed as a voting member to the Commission may not be an officer or employee of the Federal Government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 6 months after the enactment of this Act. If any member of the Commission described in paragraph (3)(A) is not appointed by such date, the Commission shall carry out its duties under this section without the participation of such member.

(6) TERM OF SERVICE.—The term of office for members shall be for life of the Commission.

(7) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(8) Meetings.—

(A) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members.

(9) QUORUM.—Nine members of the Commission shall constitute a quorum.

(10) Chair and Vice Chair.—The voting members of the Commission shall elect a Chairman and Vice Chairman from among its members. The term of office shall be for the life of the Commission.

(b) DUTIES.—The Commission shall review, examine, and make recommendations regarding border enforcement policies, strategies, and programs, including recommendations regarding—

(1) the protection of human and civil rights of community residents and migrants along the international border between the United States and Mexico;

(2) the adequacy and effectiveness of human and civil rights training of enforcement personnel on such border;

(3) the adequacy of the complaint process within the agencies and programs of the Department that are employed when an individual files a grievance;

(4) the effect of the operations, technology, and enforcement infrastructure along such border on the—

(A) environment;

(B) cross border traffic and commerce; and

(C) the quality of life of border communities;

(5) local law enforcement involvement in the enforcement of Federal immigration law; and

(6) any other matters regarding border enforcement policies, strategies, and programs the Commission determines appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Commission may seek directly from any department or agency of the United States such information, including suggestions, estimates, and statistics, as allowed by law and as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions. The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel expenses and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

(e) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—

(1) findings with respect to the duties of the Commission;

(2) recommendations regarding border enforcement policies, strategies, and programs;

(3) suggestions for the implementation of the Commission's recommendations; and

(4) a recommendation as to whether the Commission should continue to exist after the date of termination described in subsection (g), and if so, a description of the purposes and duties recommended to be carried out by the Commission after such date.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(g) SUNSET.—Unless the Commission is reauthorized by Congress, the Commission shall terminate on the date that is 90 days after the date the Commission submits the report described in subsection (e).

SEC. 139. NORTHERN BORDER PROSECUTION REIMBURSEMENT.

(a) SHORT TITLE.—This section may be cited as the 'Northern Border Prosecution Initiative Reimbursement Act'.

(b) NORTHERN BORDER PROSECUTION INITIATIVE.—

(1) INITIATIVE REQUIRED.—From amounts made available to carry out this section, the Attorney General, acting through the Director of the Bureau of Justice Assistance of the Office of Justice Programs, shall carry out a program, to be known as the Northern Border Prosecution Initiative, to provide funds to reimburse eligible northern border entities for costs incurred by those entities for handling case dispositions of criminal cases that are federally initiated but federally declined†referred. This program shall be modeled after the Southwestern Border Prosecution Initiative and shall serve as a partner program to that initiative to reimburse local jurisdictions for processing Federal cases.

(2) PROVISION AND ALLOCATION OF FUNDS.—Funds provided under the program shall be provided in the form of direct reimbursements and shall be allocated in a manner consistent with the manner under which funds are allocated under the Southwestern Border Prosecution Initiative.

(3) USE OF FUNDS.—Funds provided to an eligible northern border entity may be used by the entity for any lawful purpose, including the following purposes:

(A) Prosecution and related costs.

(B) Court costs.

(C) Costs of courtroom technology.

(D) Costs of constructing holding spaces.

(E) Costs of administrative staff.

(F) Costs of defense counsel for indigent defendants.

(G) Detention costs, including pre-trial and post-trial detention.

(4) DEFINITIONS.—In this section:

(A) The term 'eligible northern border entity' means—

(i) any of the following States: Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin; or

(ii) any unit of local government within a State referred to in clause (i).

(B) The term 'federally initiated' means, with respect to a criminal case, that the case results from a criminal investigation or an arrest involving Federal law enforcement authorities for a potential violation of Federal criminal law, including investigations resulting from multi-jurisdictional task forces.

(C) The term 'federally declined-referred' means, with respect to a criminal case, that a decision has been made in that case by a United States Attorney or a Federal law enforcement agency during a Federal investigation to no longer pursue Federal criminal charges against a defendant and to refer the investigation to a State or local jurisdiction for possible prosecution. The term includes a decision made on an individualized case-by-case basis as well as a decision made pursuant to a general policy or practice or pursuant to prosecutorial discretion.

(D) The term 'case disposition', for purposes of the Northern Border Prosecution Initiative, refers to the time between a suspect's arrest and the resolution of the criminal charges through a county or State judicial or prosecutorial process. Disposition does not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $28,000,000 for fiscal year 2008 and such sums as may be necessary for each succeeding fiscal year.

Subtitle D—Asylum and Detention Safeguards

SEC. 140. SHORT TITLE.

This subtitle may be cited as the 'Secure and Safe Detention and Asylum Act'.

SEC. 141. DEFINITIONS.

In this subtitle:

(1) CREDIBLE FEAR OF PERSECUTION.—The term 'credible fear of persecution' has the meaning given that term in section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)).

(2) DETAINEE.—The term 'detainee' means an alien in the custody of the Department of Homeland Security who is held in a detention facility.

(3) DETENTION FACILITY.—The term 'detention facility' means any Federal facility in which an alien detained pending the outcome of a removal proceeding, or an alien detained pending the execution of a final order of removal, is detained for more than 72 hours, or any other facility in which such detention services are provided to the Federal Government by contract, and does not include detention at any port of entry in the United States.

(4) REASONABLE FEAR OF PERSECUTION OR TORTURE.—The term 'reasonable fear of persecution or torture' has the meaning given that term in section 208.31 of title 8, Code of Federal Regulations.

(5) STANDARD.—The term 'standard' means any policy, procedure, or other requirement.

SEC. 142. RECORDING EXPEDITED REMOVAL INTERVIEWS.

(a) IN GENERAL.—The Secretary shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a standard manner, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) FACTORS RELATING TO SWORN STATEMENTS.—Where practicable, as determined by the Secretary in his discretion, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(c) EXEMPTION AUTHORITY.—

(1) IN GENERAL.—Subsection (b) shall not apply to interviews that occur at facilities, locations, or areas exempted by the Secretary pursuant to this subsection.

(2) EXEMPTION.—The Secretary or the Secretary's designee may exempt any facility, location, or area from the requirements of this section based on a determination by the Secretary or the Secretary's designee that compliance with subsection (b) at that facility would impair operations or impose undue burdens or costs.

(3) REPORT.—The Secretary or the Secretary's designee shall report annually to Congress on the facilities that have been exempted pursuant to this subsection.

(d) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien and there is no other Federal, State, or local government employee available who is able to interpret effectively, accurately, and impartially.

(e) RECORDINGS IN IMMIGRATION PROCEEDINGS.—Recordings of interviews of aliens subject to expedited removal shall be included in the record of proceeding and may be considered as evidence in any further proceedings involving the alien.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 143. OPTIONS REGARDING DETENTION DECISIONS.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) in the first sentence by striking 'Attorney General' and inserting 'Secretary of Homeland Security'; and

(ii) in the second sentence by striking 'Attorney General' and inserting 'Secretary';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking 'Attorney General' and inserting 'Secretary'; and

(II) by striking 'or' at the end;

(ii) in subparagraph (B), by striking 'but' at the end; and

(iii) by inserting after subparagraph (B) the following:

''(C) the alien's own recognizance; or

''(D) a secure alternatives program as provided for in this section; but'';

(2) in subsection (b), by striking 'Attorney General' and inserting 'Secretary';

(3) in subsection (c)—

(A) by striking 'Attorney General' and inserting 'Secretary' each place it appears; and

(B) in paragraph (2), by inserting 'or for humanitarian reasons,' after 'such an investigation,'; and

(4) in subsection (d)—

(A) in paragraph (1), by striking 'Attorney General' and inserting 'Secretary';

(B) in paragraph (1), in subparagraphs (A) and (B), by striking 'Service' each place it appears and inserting 'Department of Homeland Security'; and

(C) in paragraph (3), by striking 'Service' and inserting 'Secretary of Homeland Security'.

SEC. 144. REPORT TO CONGRESS ON PAROLE PROCEDURES AND STANDARDIZATION OF PAROLE PROCEDURES.

(a) IN GENERAL.—The Attorney General and the Secretary of Homeland Security shall jointly conduct a review and report to the appropriate Committees of the Senate and the House of Representatives within 180 days of the date of enactment of this Act regarding the effectiveness of parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts. The report shall include the following:

(1) An analysis of the rate at which release from detention (including release on parole) is granted to aliens who have established a

credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts throughout the United States, and any disparity that exists between locations or geographical areas, including explanation of the reasons for this disparity and what actions are being taken to have consistent and uniform application of the standards for granting parole.

(2) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's pursuit of their asylum claim before an immigration court.

(3) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's physical and psychological well-being.

(4) An analysis of the effectiveness of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary in securing the alien's presence at the immigration court proceedings.

(b) RECOMMENDATIONS.—The report shall include recommendations with respect to whether the existing parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts should be modified in order to ensure a more consistent application of these procedures in a way that both respects the interests of aliens pursuing valid claims of asylum and ensures the presence of the aliens at the immigration court proceedings.

SEC. 145. LEGAL ORIENTATION PROGRAM.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that all detained aliens in immigration and asylum proceedings receive legal orientation through a program administered and implemented by the Executive Office for Immigration Review of the Department of Justice.

(b) CONTENT OF PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Executive Office for Immigration Review on the date of the enactment of this Act.

(c) EXPANSION OF LEGAL ASSISTANCE.—The Secretary shall ensure the expansion through the United States Citizenship and Immigration Service of public-private partnerships that facilitate pro bono counseling and legal assistance for aliens awaiting a credible fear of persecution interview or an interview related to a reasonable fear of persecution or torture determination under section 241(b)(3).

SEC. 146. CONDITIONS OF DETENTION.

(a) IN GENERAL.—The Secretary shall ensure that standards governing conditions and procedures at detention facilities are fully implemented and enforced, and that all detention facilities comply with the standards.

(b) PROCEDURES AND STANDARDS.—The Secretary shall promulgate new standards, or modify existing detention standards, to comply with the following policies and procedures:

(1) FAIR AND HUMANE TREATMENT.—Procedures to prevent detainees from being subject to degrading or inhumane treatment such as physical abuse, sexual abuse or harassment, or arbitrary punishment.

(2) LIMITATIONS ON SOLITARY CONFINEMENT.—Procedures limiting the use of solitary confinement, shackling, and strip searches of detainees to situations where the use of such techniques is necessitated by security interests, the safety of officers and other detainees, or other extraordinary circumstances.

(3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of grievances raised by detainees.

(4) ACCESS TO TELEPHONES.—Procedures permitting detainees sufficient access to telephones, and the ability to contact, free of charge, legal representatives, the immigration courts, the Board of Immigration Appeals, and the Federal courts through confidential toll-free numbers.

(5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near sources of free or low-cost legal representation with expertise in asylum or immigration law.

(6) PROCEDURES GOVERNING TRANSFERS OF DETAINEES.—Procedures governing the transfer of a detainee that take into account—

(A) the detainee's access to legal representatives; and

(B) the proximity of the facility to the venue of the asylum or removal proceeding.

(7) QUALITY OF MEDICAL CARE.—

(A) IN GENERAL.—Essential medical care provided promptly at no cost to the detainee, including dental care, eye care, mental health care, and where appropriate, individual and group counseling, medical dietary needs, and other medically necessary specialized care. Medical facilities in all detention facilities used by the Department maintain current accreditation by the National Commission on Correctional Health Care (NCCHC). Requirements that each medical facility that is not accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) will seek to obtain such accreditation. Maintenance of complete medical records for every detainee which shall be made available upon request to a detainee, his legal representative, or other authorized individuals.

(B) EXCEPTION.—A detention facility that is not operated by the Department of Homeland Security or by a private contractor on behalf of the Department of Homeland Security shall not be required to maintain current accreditation by the NCCHC or to seek accreditation by the JCAHO.

(8) TRANSLATION CAPABILITIES.—The employment of detention facility staff that, to the extent practicable, are qualified in the languages represented in the population of detainees at a detention facility, and the provision of alternative translation services when necessary.

(9) RECREATIONAL PROGRAMS AND ACTIVITIES.—Frequent access to indoor and outdoor recreational programs and activities.

(c) SPECIAL STANDARDS FOR NONCRIMINAL DETAINEES.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the distinctions between persons with criminal convictions or a history of violent behavior and all other detainees; and

(2) ensure that procedures and conditions of detention are appropriate for a non-criminal, nonviolent population.

(d) SPECIAL STANDARDS FOR SPECIFIC POPULATIONS.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the unique needs of—

(A) victims of persecution, torture, trafficking, and domestic violence;

(B) families with children;

(C) detainees who do not speak English; and

(D) detainees with special religious, cultural, or spiritual considerations; and

(2) ensure that procedures and conditions of detention are appropriate for the populations described in paragraph (1).

(e) TRAINING OF PERSONNEL.—

(1) IN GENERAL.—The Secretary shall ensure that personnel in detention facilities are given specialized training to better understand and work with the population of detainees held at the facilities where such personnel work. The training should address the unique needs of—

(A) aliens who have established credible fear of persecution;

(B) victims of torture or other trauma and victims of persecution, trafficking, and domestic violence; and

(C) families with children, detainees who do not speak English, and detainees with special religious, cultural, or spiritual considerations.

(2) SPECIALIZED TRAINING.—The training required by this subsection shall be designed to better enable personnel to work with detainees from different countries, and detainees who cannot speak English. The training shall emphasize that many detainees have no criminal records and are being held for civil violations.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 147. OFFICE OF DETENTION OVERSIGHT.

(a) ESTABLISHMENT OF THE OFFICE.—

(1) IN GENERAL.—There shall be established within the Department an Office of Detention Oversight (in this section referred to as the ''Office'').

(2) HEAD OF THE OFFICE.—There shall be at the head of the Office an Administrator. At the discretion of the Secretary, the Administrator of the Office shall be appointed by, and shall report to, either the Secretary or the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement. The Office shall be independent of the Office of Detention and Removal Operations, but shall be subject to the supervision and direction of the Secretary or Assistant Secretary.

(3) SCHEDULE.—The Office shall be established and the Administrator of the Office appointed not later than 6 months after the date of the enactment of this Act.

(b) RESPONSIBILITIES OF THE OFFICE.—

(1) INSPECTIONS OF DETENTION CENTERS.—The Administrator of the Office shall—

(A) undertake regular and, where appropriate, unannounced inspections of all detention facilities;

(B) develop a procedure for any detainee or the detainee's representative to file a confidential written complaint directly with the Office; and

(C) report to the Secretary and to the Assistant Secretary all findings of a detention facility's noncompliance with detention standards.

(2) INVESTIGATIONS.—The Administrator of the Office shall—

(A) initiate investigations, as appropriate, into allegations of systemic problems at detention facilities or incidents that constitute serious violations of detention standards;

(B) conduct any review or audit relating to detention as directed by the Secretary or the Assistant Secretary;

(C) report to the Secretary and the Assistant Secretary the results of all investigations, reviews, or audits; and

(D) refer matters, where appropriate, for further action to—

(i) the Department of Justice;

(ii) the Office of the Inspector General of the Department;

(iii) the Office of Civil Rights and Civil Liberties of the Department; or

(iv) any other relevant office or agency.

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—The Administrator of the Office shall submit to the Secretary, the Assistant Secretary, the Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives an annual report on the Administrator's findings on detention conditions and the results of the completed investigations carried out by the Administrator.

(B) CONTENTS OF REPORT.—Each report required by subparagraph (A) shall include—

(i) a description of—

(I) each detention facility found to be in noncompliance with the standards for detention required by this subtitle; and

(II) the actions taken by the Department to remedy any findings of noncompliance or other identified problems; and

(ii) information regarding whether such actions were successful and resulted in compliance with detention standards.

(c) COOPERATION WITH OTHER OFFICES AND AGENCIES.—Whenever appropriate, the Administrator of the Office shall cooperate and coordinate its activities with—

(1) the Office of the Inspector General of the Department;

(2) the Office of Civil Rights and Civil Liberties of the Department;

(3) the Privacy Officer of the Department;

(4) the Department of Justice; or

(5) any other relevant office or agency.

SEC. 148. SECURE ALTERNATIVES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a secure alternatives program under which an alien who has been detained may be released under enhanced supervision to prevent the alien from absconding and to ensure that the alien makes appearances related to such detention.

(b) PROGRAM REQUIREMENTS.—

(1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the development of the secure alternatives program on a nationwide basis, as a continuation of existing pilot programs such as the Intensive Supervision Appearance Program developed by the Department.

(2) UTILIZATION OF ALTERNATIVES.—In facilitating the development of the secure alternatives program, the Secretary shall have discretion to utilize a continuum of alternatives to a supervision of the alien, including placement of the alien with an individual or organizational sponsor, or in a supervised group home.

(3) ALIENS ELIGIBLE FOR SECURE ALTERNATIVES PROGRAM.—

(A) IN GENERAL.—Aliens who would otherwise be subject to detention based on a consideration of the release criteria in section 236(b)(2), or who are released pursuant to section 236(c)(2), shall be considered for the secure alternatives program.

(B) DESIGN OF PROGRAMS.—In developing the secure alternatives program, the Secretary shall take into account the extent to which the program includes only those alternatives to detention that reasonably and reliably ensure—

(i) the alien's continued presence at all future immigration proceedings;

(ii) the alien's compliance with any future order or removal; and

(iii) the public safety or national security.

(C) CONTINUED EVALUATION.—The Secretary shall evaluate regularly the effectiveness of the program, including the effectiveness of the particular alternatives to detention used under the program, and make such modifications as the Secretary deems necessary to improve the program's effectiveness or to deter abuse.

(4) CONTRACTS AND OTHER CONSIDERATIONS.—The Secretary may enter into contracts with qualified nongovernmental entities to implement the secure alternatives program and, in designing such program, shall consult with relevant experts and consider programs that have proven successful in the past.

SEC. 149. LESS RESTRICTIVE DETENTION FACILITIES.

(a) CONSTRUCTION.—To the extent practicable, the Secretary shall facilitate the construction or use of secure but less restrictive detention facilities for the purpose of long-term detention where detainees are held longer than 72 hours.

(b) CRITERIA.—In pursuing the development of detention facilities pursuant to this section, the Secretary shall—

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities; and

(2) to the extent practicable, construct or use detention facilities where—

(A) movement within and between indoor and outdoor areas of the facility is subject to minimal restrictions;

(B) detainees have ready access to social, psychological, and medical services;

(C) detainees with special needs, including those who have experienced trauma or torture, have ready access to services and treatment addressing their needs;

(D) detainees have frequent access to programs and recreation;

(E) detainees are permitted contact visits with legal representatives and family members; and

(F) special facilities are provided to families with children.

(c) FACILITIES FOR FAMILIES WITH CHILDREN.—In any case in which release or secure alternatives programs are not a practicable option, the Secretary shall, to the extent practicable, ensure that special detention facilities for the purposes of long-term detention where detainees are held longer than 72 hours are specifically designed to house parents with their minor children, including ensuring that—

(1) procedures and conditions of detention are appropriate for families with minor children; and

(2) living and sleeping quarters for children under 14 years of age are not physically separated from at least 1 of the child's parents.

(d) PLACEMENT IN NONPUNITIVE FACILITIES.—Among the factors to be considered with respect to placing a detainee in a less restrictive facility is whether the detainee is—

(1) part of a family with minor children;

(2) a victim of persecution, torture, trafficking, or domestic violence; or

(3) a nonviolent, noncriminal detainee.

(e) PROCEDURES AND STANDARDS.—Where necessary, the Secretary shall promulgate new standards, or modify existing detention standards, to promote the development of less restrictive detention facilities.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 150. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect on the date that is 180 days after the date of the enactment of this Act.

TITLE II—INTERIOR ENFORCEMENT

SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL.

(a) DEPARTMENT OF HOMELAND SECURITY.—

(1) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(2) USCIS ADJUDICATORS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for adjudicators in the United States Citizenship and Immigration Service by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out paragraphs (1) and (2).

(b) DEPARTMENT OF JUSTICE.—

(1) JUDICIAL CLERKS.—The Attorney General shall, subject to the availability of appropriations for such purpose, appoint necessary law clerks for immigration judges and Board of Immigration Appeals members of no less than one per judge and member. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5 [5 USCS Sec. 6301 et seq.].

(2) LITIGATION ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of Immigration Litigation by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(3) UNITED STATES ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of attorneys in the United States Attorneys' office to litigate immigration cases in the Federal courts by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(4) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through 2012, the Attorney General, subject to the availability of appropriations for such purpose, shall—

(A) increase by not less than 20 the number of full-time immigration judges compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase by not less than 80 the number of positions for personnel to support the immigration judges described in subparagraph (A) compared to the number of such positions for which funds were made available during the preceding fiscal year.

(5) BOARD OF IMMIGRATION APPEALS MEMBERS.—The Attorney General shall, subject to the availability of appropriations, increase by 10 the number members of the Board of Immigration Appeals over the number of members serving on the date of enactment of this Act.

(6) STAFF ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase the number of positions for full-time staff attorneys in the Board of Immigration Appeals by not less than 20 compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase the number of positions for personnel to support the staff attorneys described in subparagraph (A) by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out this subsection, including the hiring of necessary support staff.

(c) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In each of the fiscal years 2008 through 2012, the Director of the Administrative Office of the United States Courts, subject to the availability of appropriations, shall increase the number of attorneys in the Federal Defenders Program who litigate criminal immigration cases in the Federal courts by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

(d) LEGAL ORIENTATION PROGRAM.—

(1) CONTINUED OPERATION.—The Director of the Executive Office for Immigration Review shall continue to operate a legal orientation program to provide basic information about immigration court procedures for immigration detainees and shall expand the legal orientation program to provide such information on a nationwide basis.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out such legal orientation program.

SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(a) IN GENERAL.—

(1) AMENDMENTS.—Section 241(a) (8 U.S.C. 1231(a)) is amended—

(A) by striking ''Attorney General'' the first place it appears, except for the first reference in clause (a)(4)(B)(i), and inserting ''Secretary of Homeland Security'';

(B) by striking ''Attorney General'' any other place it appears and inserting ''Secretary'';

(C) in paragraph (1)—

(i) in subparagraph (B), by amending clause (ii) to read as follows:

''(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the expiration date of the stay of removal.'';

(ii) by amending subparagraph (C) to read as follows:

''(C) EXTENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to—

''(i) make all reasonable efforts to comply with the removal order; or

''(ii) fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including failing to make timely application in good faith for travel or other documents necessary to the alien's departure, or conspiring or acting to prevent the alien's removal.''; and

(iii) by adding at the end the following:

''(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date on which the alien is returned to the custody of the Secretary.'';

(D) in paragraph (2), by adding at the end the following: ''If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administrative final order of removal, the secretary, in the exercise of discretion, may detain the alien during the pendency of such stay of removal.'';

(E) in paragraph (3), by amending subparagraph (D) to read as follows:

''(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform affirmative acts, that the Secretary prescribes for the alien——

''(i) to prevent the alien from absconding;

''(ii) for the protection of the community; or

''(iii) for other purposes related to the enforcement of the immigration laws.'';

(F) in paragraph (6), by striking ''removal period and, if released,'' and inserting ''removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien'';

(G) by redesignating paragraph (7) as paragraph (10); and

(H) by inserting after paragraph (6) the following:

''(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

''(8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF ALIENS.—The following procedures shall apply to an alien detained under this section:

''(A) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FULLY COOPERATE WITH REMOVAL.—The Secretary of Homeland Security shall establish an administrative review process to determine whether an alien described in subparagraph (B) should be detained or released after the removal period in accordance with this paragraph.

''(B) ALIEN DESCRIBED.—An alien is described in this subparagraph if the alien—

''(i) has effected an entry into the United States;

''(ii) has made all reasonable efforts to comply with the alien's removal order;

''(iii) has cooperated fully with the Secretary's efforts to establish the alien's identity and to carry out the removal order, including making timely application in good faith for travel or other documents necessary for the alien's departure; and

''(iv) has not conspired or acted to prevent removal.

''(C) EVIDENCE.—In making a determination under subparagraph (A), the Secretary—

''(i) shall consider any evidence submitted by the alien;

''(ii) may consider any other evidence, including—

''(I) any information or assistance provided by the Department of State or other Federal agency; and

''(II) any other information available to the Secretary pertaining to the ability to remove the alien.

''(D) AUTHORITY TO DETAIN FOR 90 DAYS BEYOND REMOVAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien for 90 days beyond the removal period (including any extension of the removal period under paragraph (1)(C)).

''(E) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien beyond the 90-day period authorized under subparagraph (D) until the alien is removed, if the Secretary—

''(i) determines that there is a significant likelihood that the alien will be removed in the reasonably foreseeable future; or

''(ii) certifies in writing—

''(I) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

''(II) after receipt of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences for the United States;

''(III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

''(IV) that—

''(aa) the release of the alien would threaten the safety of the community or any person, and conditions of release cannot reasonably be expected to ensure the safety of the community or any person; and

''(bb) the alien—

''(AA) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for an aggregate term of imprisonment of at least 5 years; or

''(BB) has committed a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

''(V) that—

''(aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions of release designed to ensure the safety of the community or any person; and

''(bb) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)) for which the alien was sentenced to an aggregate term of imprisonment of not less than 1 year.

''(F) ATTORNEY GENERAL REVIEW.—If the Secretary authorizes an extension of detention under subparagraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I). The Attorney General, in consultation with the Secretary, shall promulgate regulations governing review under this paragraph.

''(G) ADMINISTRATIVE REVIEW PROCESS.—The Secretary, without any limitations other than those specified in this section, may detain an alien pending a determination under subparagraph (E)(ii), if the Secretary has initiated the administrative review process identified in subparagraph (A) not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

''(H) RENEWAL AND DELEGATION OF CERTIFICATION.—

''(i) RENEWAL.—The Secretary may renew a certification under subparagraph (E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew such certification, the Secretary shall release the alien, pursuant to subparagraph (I). If the Secretary authorizes an extension of detention under paragraph (E), the alien may seek review of that determination before the Attorney General. If the Attorney General concludes that the alien should be released, then the Secretary shall release the alien pursuant to subparagraph (I).

''(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make or renew a certification described in subclause (II), (III), or (V) of subparagraph (E)(ii) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

''(iii) HEARING.—The Secretary may request that the Attorney General, or a designee of the Attorney General, provide for a hearing to make the determination described in subparagraph (E)(ii)(IV)(bb)(BB).

''(I) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary's discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

''(J) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if——

''(i) the alien fails to comply with the conditions of release;

''(ii) the alien fails to continue to satisfy the conditions described in subparagraph (B); or

''(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

''(K) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under subparagraph (I) as if the removal period terminated on the day of the redetention.

''(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary's efforts, if the alien——

''(i) has effected an entry into the United States; and

''(ii)(I) the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future, or would have been removed if the alien had not——

''(aa) failed or refused to make all reasonable efforts to comply with a removal order;

''(bb) failed or refused to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including the failure to make timely application in good faith for travel or other documents necessary to the alien's departure; or

''(cc) conspired or acted to prevent removal; or

''(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (H).

''(M) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

''(9) JUDICIAL REVIEW.—Judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall take effect on the date of the enactment of this Act; and (B) shall apply to—

(i) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act, unless (a) that order was issued and the alien was subsequently released or paroled before the enactment of this Act and (b) the alien has complied with and remains in compliance with the terms and conditions of that release or parole; and

(ii) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 203. AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking ''The term 'aggravated felony' means—'' and inserting ''Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—'';

(2) in subparagraph (A), by striking ''murder, rape, or sexual abuse of a minor;'' and inserting ''murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;'';

(3) in subparagraph (N), by striking ''paragraph (1)(A) or (2) of''; and

(4) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall—

(A) take effect on the date of the enactment of this Act; and

(B) apply to any conviction that occurred on or after the date of the enactment of this Act.

(2) APPLICATION OF IIRAIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 204. INADMISSIBILITY AND DEPORTABILITY OF GANG MEMBERS.

(a) DEFINITION OF CRIMINAL GANG.—Section 101(a) (8 U.S.C. 1101(a)) is amended by inserting after paragraph (51) the following:

''(52)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons—

''(i) that has, as 1 of its primary purposes, the commission of 1 or more of the criminal offenses described in subparagraph (B); and

''(ii) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subparagraph (B).

''(B) Offenses described in this subparagraph, whether in violation of Federal or State law or in violation of the law of a foreign country, regardless of whether charged, and regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph, are—

''(i) a felony drug offense (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(ii) a felony offense involving firearms or explosives, including a violation of section 924(c), 924(h), or 931 of title 18 (relating to purchase, ownership, or possession of body armor by violent felons);

''(iii) an offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to the importation of an alien for immoral purpose);

''(iv) a felony crime of violence as defined in section 16 of title 18, United States Code, which is punishable by a sentence of imprisonment of 5 years or more, including first degree murder, arson, possession, brandishment, or discharge of firearm in connection with crime of violence or drug trafficking offense, use of a short-barreled or semi-automatic weapons, use of a machine gun, murder of individuals involved in aiding a Federal investigation, kidnapping, bank robbery if death results or a hostage is kidnapped, sexual exploitation and other abuse of children, selling or buying of children, activities relating to material involving the sexual exploitation of a minor, activities relating to material constituting or containing child pornography, or illegal transportation of a minor;

''(v) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

''(vi) any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property); and

''(vii) a conspiracy to commit an offense described in clause (i) through (vi).''.

(b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (L); and

''(2) by inserting after subparagraph (E) the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, is inadmissible.''.

(c) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, who at any time has participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang is deportable. The

Secretary of Homeland Security or the Attorney General may waive the application of this subparagraph.''.

''(d) TEMPORARY PROTECTED STATUS.—Section 244 (8 U.S.C. 1254a) is amended—

''(1) by striking ', Attorney General' each place it appears and inserting 'Secretary of Homeland Security';

''(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking 'or' and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting 'or'; and

(C) by adding at the end the following:

(iii) the alien participates in, or at any time after admission has participated in, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, the activities of a criminal gang.'; and

(3) in subsection (d)—

(A) in paragraph (2)—

(i) by striking 'Subject to paragraph (3), such' and inserting 'Such'; and

(ii) by striking '(under paragraph (3))';

(B) by striking paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3); and

(D) in paragraph (3), as redesignated, by adding at the end the following: 'The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision.'.

(e) INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.—

(1) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section 209(a)(3), is further amended—

(A) in subclause (II), by striking 'or' at the end;

(B) in subclause (III), by striking the comma at the end and inserting a semicolon; and

(C) by inserting after subclause (III) the following:

''(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender); or''.

(2) DEPORTABILITY.—Section 237(a)(2)(A)(i) (8 U.S.C. 1227(a)(2)(A)(i)) is amended—

(A) in subclause (I), by striking ', and' and inserting a semicolon;

(B) in subclause (II), by striking the comma at the end and inserting '; or'; and

(C) by adding at the end the following:

''(III) ''a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender).''.

(f) PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF PROTECTION ORDERS.—

(1) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C. 1182) is amended—

(A) in subsection (a)(2), by adding at the end the following:

''(J) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.—

''(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, provided the alien served at least 1 year's imprisonment for the crime or provided the alien was convicted of or admitted to acts constituting more than 1 such crime, not arising out of a single scheme of criminal misconduct, is inadmissible. In this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

''(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that constitutes criminal contempt of the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, is inadmissible. In this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

''(iii) APPLICABILITY.—This subparagraph shall not apply to an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, upon a determination by the Attorney General or the Secretary of Homeland Security that—

''(I) the alien was acting in self-defense;

''(II) the alien was found to have violated a protection order intended to protect the alien; or

''(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury.'; and

''(B) in subsection (h)—

(i) by striking ''The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)'' and inserting ''The Attorney General or the Secretary of Homeland Security may waive the application of subparagraphs (A)(i)(I), (B), (D), (E), (F), (J), and (K) of subsection (a)(2)''; and

(ii) by inserting ''or Secretary of Homeland Security'' after ''the Attorney General'' each place it appears.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any acts that occurred on or after the date of the enactment of this Act.

SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO DRUNK DRIVING, ILLEGAL ENTRY, PERJURY, AND FIREARMS OFFENSES.

(a) DRUNK DRIVING.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by inserting after subparagraph (J), as added by section 204(f) the following:

''(K) DRUNK DRIVERS.—Any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is inadmissible.''.

(2) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) DRUNK DRIVERS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is deportable.''.

(3) CONFORMING AMENDMENT.—Section 212(h) (8 U.S.C. 1182(h)) is amended—

(A) in the subsection heading, by striking ''Subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E)'' and inserting ''Certain Provisions in Subsection (a)(2)''; and

(B) in the matter preceding paragraph (1), by striking ''and (E)'' and inserting ''(E), and (F)''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to convictions entered on or after such date.

(b) ILLEGAL ENTRY.—

(1) IN GENERAL.—Section 275 (8 U.S.C. 1325) is amended to read as follows:

''SEC. 275. ILLEGAL ENTRY.

''(a) IN GENERAL.—

''(1) CRIMINAL OFFENSES.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

''(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

''(B) knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

''(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

''(2) CRIMINAL PENALTIES.—Any alien who violates any provision under paragraph (1)—

''(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

''(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

''(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

''(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

''(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

''(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

''(A) alleged in the indictment or information; and

''(B) proven beyond a reasonable doubt at trial or admitted by the defendant.

''(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

''(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

''(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while

entering, attempting to enter, or knowingly crossing or attempting to cross, the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

''(1) not less than $50 and not more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

''(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.''.

''(2) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 275 and inserting the following: ''Sec.275.Illegal entry.''.

(3) EFFECTIVE DATE.—Section 275(a)(4) of the Immigration and Nationality Act, as added by this Act, shall apply only to violations of section 275(a)(1) committed on or after the date of the enactment of this Act.

(c) PERJURY AND FALSE STATEMENTS.—Any person who willfully submits any materially false, fictitious, or fraudulent statement or representation (including any document, attestation, or sworn affidavit for that person or any person) relating to an application for any benefit under the immigration laws (including for Z non–immigrant status) will be subject to prosecution for perjury under section 1621 of title 18, United States Code, or for making such a statement or representation under section 1001 of that title.

(d) INCREASED PENALTIES RELATING TO FIREARMS OFFENSES.—

(1) PENALTIES RELATED TO REMOVAL.—Section 243 (8 U.S.C. 1253) is amended—

(A) in subsection (a)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''212(a)'' or after ''section''; and

(ii) in the matter following subparagraph (D)—

(I) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not more than 5 years''; and

(II) by striking '', or both'';

(B) in subsection (b), by striking ''not more than $1000 or imprisoned for not more than one year, or both'' and inserting ''under title 18, United States Code, and imprisoned for not more than 5 years (or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a)).''; and

(2) PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.—Section 924(c) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting '', alien smuggling crime,'' after ''any crime of violence'';

(ii) in subparagraph (A), by inserting '', alien smuggling crime,'' after 'such crime of violence'; and

(iii) in subparagraph (D)(ii), by inserting '', alien smuggling crime,'' after ''crime of violence''; and

(B) by adding at the end the following:

''(6) For purposes of this subsection, the term ''alien smuggling crime;' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).''.

(3) INADMISSIBILITY FOR FIREARMS OFFENSES.—Section 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)), as amended by sections 204(e) and 209(a)(3), is amended—

(A) in clause (i), by inserting after subclause (IV) the following:

''(V) a crime involving the purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code), provided the alien was sentenced to at least 1 year for the offense,''; and

(B) in clause (ii), by striking ''Clause (i)(I)'' and inserting ''Subclauses (I), (IV), and (V) of clause (i)''.

SEC. 206. ILLEGAL ENTRY.

(a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is amended to read as follows:

''SEC. 275. ILLEGAL ENTRY.

''(a) IN GENERAL.—

''(1) CRIMINAL OFFENSES.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

''(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

''(B) knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

''(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

''(2) CRIMINAL PENALTIES.—Any alien who violates any provision under paragraph (1)—

''(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

''(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

''(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

''(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

''(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

''(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

''(A) alleged in the indictment or information; and

''(B) proven beyond a reasonable doubt at trial or admitted by the defendant.

''(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

''(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

''(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

''(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

''(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.''.

(b) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 275 and inserting the following: ''Sec.275.Illegal Entry.''.

(c) EFFECTIVE DATE.—Subsection (a)(4) of section 275 of the Immigration and Nationality Act, as created by this Act, shall apply only to violations of subsection (a)(1) of section 275 committed on or after the date of enactment of this Act.

SEC. 207. ILLEGAL REENTRY.

Section 276 (8 U.S.C. 1326) is amended to read as follows:

''SEC. 276. REENTRY OF REMOVED ALIEN.

Strike subsections (a) through (c) of section 276 of the Immigration and Nationality Act, and insert the following:

''(a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 60 days and not more than 2 years.

''(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

''(1) was convicted for 3 or more misdemeanors or a felony before such removal or departure, the alien shall be fined under title 18, United States Code, and imprisoned not less than 1 year and not more than 10 years, or both;

''(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, and imprisoned not less than 2 years and not more than 15 years, or both;

''(3) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years, or both;

''(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years, or both; or

''(5) was convicted, before such removal or departure, for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, and imprisoned not less than 5 years and not more than 20 years, or both.

''(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 2 years and not more than 10 years, or both.''.

''(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b)

are elements of the crimes described in that subsection, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

''(1) alleged in the indictment or information; and

''(2) proven beyond a reasonable doubt at trial or admitted by the defendant.

''(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

''(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States;

''(2) with respect to an alien previously denied admission and removed, the alien—

''(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

''(B) had complied with all other laws and regulations governing the alien's admission into the United States; or

''(3) at the time of the prior exclusion, deportation, removal, or denial of admission alleged in the violation, the alien—

''(A) was under the age of eighteen, and

''(B) had not been convicted of a crime or adjudicated a delinquent minor by a court of the United States, or a court of a state or territory, for conduct that would constitute a felony if committed by an adult.

''(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

''(1) the alien exhausted all administrative remedies that may have been available to seek relief against the order;

''(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

''(3) the entry of the order was fundamentally unfair.

''(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

''(h) LIMITATION.—It is not aiding and abetting a violation of this section for an individual to provide an alien with emergency humanitarian assistance, including emergency medical care and food, or to transport the alien to a location where such assistance can be rendered without compensation or the expectation of compensation.

''(i) DEFINITIONS.—In this section:

''(1) FELONY.—Term ''felony'' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

''(2) MISDEMEANOR.—The term ''misdemeanor'' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

''(3) REMOVAL.—The term ''removal'' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

''(4) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—

(1) IN GENERAL.—Chapter 75 of title 18, United States Code, is amended to read as follows:

''CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

''Sec.
''1541. Trafficking in passports.
''1542. False statement in an application for a passport.
''1543. Forgery and unlawful production of a passport.
''1544. Misuse of a passport.
''1545. Schemes to defraud aliens.
''1546. Immigration and visa fraud.
''1547. Marriage fraud.
''1548. Attempts and conspiracies.
''1549. Alternative penalties for certain offenses.
''1550. Seizure and forfeiture.
''1551. Additional jurisdiction.
''1552. Definitions.
''1553. Authorized law enforcement activities.''.

''SEC. 1541. TRAFFICKING IN PASSPORTS.

''(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more passports;

''(2) forges, counterfeits, alters, or falsely makes 10 or more passports;

''(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any false statement or representation, shall be fined under this title, imprisoned not more than 20 years, or both.

''(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make a passport, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

''SEC. 1542. FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.

''(a) IN GENERAL.—Any person who knowingly makes any false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) VENUE.—

''(1) An offense under subsection (a) may be prosecuted in any district,

''(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed, or

''(B) in which or to which the application was mailed or presented.

''(2) An offense under subsection (a) involving an application prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

''(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.

''SEC. 1543. FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.

''(a) FORGERY.—Any person who—

''(1) knowingly forges, counterfeits, alters, or falsely makes any passport; or

''(2) knowingly transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority, shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

''(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

''(2) produces, issues, authorizes, or verifies a United States passport for or to any person, knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

''(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed, shall be fined under this title, imprisoned not more than 15 years, or both.

''SEC. 1544. MISUSE OF A PASSPORT.

''Any person who knowingly—

''(1) uses any passport issued or designed for the use of another;

''(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

''(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

''(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States, shall be fined under this title, imprisoned not more than 15 years, or both.

''SEC. 1545. SCHEMES TO DEFRAUD ALIENS.

''(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender claims or represents is authorized by or arises under Federal immigration laws, to—

''(1) defraud any person, or

''(2) obtain or receive money or anything else of value from any person, by means of false or fraudulent pretenses, representations, or promises, shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.

''SEC. 1546. IMMIGRATION AND VISA FRAUD.

''(a) IN GENERAL.—Any person who knowingly—

''(1) uses any immigration document issued or designed for the use of another;

''(2) forges, counterfeits, alters, or falsely makes any immigration document;

''(3) completes, mails, prepares, presents, signs, or submits any immigration document

knowing it to contain any materially false statement or representation;

''(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

''(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws; or

''(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed, shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

''(2) forges, counterfeits, alters, or falsely makes 10 or more immigration documents;

''(3) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, stolen, falsely made, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing the documents to contain any materially false statement or representation, shall be fined under this title, imprisoned not more than 20 years, or both.

''(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, or possesses any official material (or counterfeit of any official material) used to make an immigration document, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

''(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

''(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor;

''(2) an identification document knowing (or having reason to know) that the document is false; or

''(3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.''.

''SEC. 1547. MARRIAGE FRAUD.

''(a) EVASION OR MISREPRESENTATION.—Any person who—

''(1) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or

''(2) knowingly misrepresents the existence or circumstances of a marriage—

''(A) in an application or document authorized by the immigration laws; or

''(B) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a consular officer, an immigration judge, or a member of the Board of Immigration Appeals), shall be fined under this title, imprisoned not more than 10 years, or both.

''(b) MULTIPLE MARRIAGES.—Any person who—

''(1) knowingly enters into 2 or more marriages for the purpose of evading any immigration law; or

''(2) knowingly arranges, supports, or facilitates 2 or more marriages designed or intended to evade any immigration law, shall be fined under this title, imprisoned not more than 20 years, or both.

''(c) COMMERCIAL ENTERPRISE.—Any person who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be fined under this title, imprisoned for not more than 10 years, or both.

''(d) DURATION OF OFFENSE.—

''(1) IN GENERAL.—An offense under subsection (a) or (b) continues until the fraudulent nature of the marriage or marriages is discovered by an immigration officer.

''(2) COMMERCIAL ENTERPRISE.—An offense under subsection (c) continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer or other law enforcement officer.

''SEC. 1548. ATTEMPTS AND CONSPIRACIES.

''Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

''SEC. 1549. ALTERNATIVE PENALTIES FOR CERTAIN OFFENSES.

Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter—

(1) if committed to facilitate a drug trafficking crime (as defined in 929(a)) is 20 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 25 years.

''SEC. 1550. SEIZURE AND FORFEITURE.

''(a) FORFEITURE.—Any property, real or personal, used to commit or facilitate the commission of a violation of any section of this chapter, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

''(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

''SEC. 1551. ADDITIONAL JURISDICTION.

''(a) IN GENERAL.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under this chapter.

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

''(1) the offense involves a United States passport or immigration document (or any document purporting to be such a document) or any matter, right, or benefit arising under or authorized by Federal immigration laws;

''(2) the offense is in or affects foreign commerce;

''(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

''(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

''(5) the offender is a national of the United States or an alien lawfully admitted for permanent residence in the United States (as those terms are defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))); or

''(6) the offender is a stateless person whose habitual residence is in the United States.

''SEC. 1552. DEFINITIONS.

''As used in this chapter:

''(1) The term 'falsely make' means to prepare or complete an immigration document with knowledge or in reckless disregard of the fact that the document—

''(A) contains a statement or representation that is false, fictitious, or fraudulent;

''(B) has no basis in fact or law; or

''(C) otherwise fails to state a fact which is material to the purpose for which the document was created, designed, or submitted.

''(2) The term 'application for a United States passport' includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

''(3) The term 'false statement or representation' includes a personation or an omission.

''(4) The term 'immigration document'—

''(A) means any application, petition, affidavit, declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other official document, arising under or authorized by the immigration laws of the United States; and

''(B) includes any document, photograph, or other piece of evidence attached to or submitted in support of an immigration document.

''(5) The term 'immigration laws' includes—

''(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

''(B) the laws relating to the issuance and use of passports; and

''(C) the regulations prescribed under the authority of any law described in paragraphs (A) and (B).

''(6) The term 'immigration proceeding' includes an adjudication, interview, hearing, or review.

''(7) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

''(8) The term 'passport' means—

''(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

''(B) any instrument purporting to be a document described in subparagraph (A).

(9) The term 'to present' means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

''(10) The term 'proceeds' includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

''(11) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

''(12) The term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

''(13) The 'use' of a passport or an immigration document referred to in section 1541(a), section 1543(b), section 1544, section 1546(a), and section 1546(b) of this chapter includes any officially authorized use; use to travel; use to demonstrate identity, residence, nationality, citizenship, or immigration status; use to seek or maintain employment; or use in any matter within the jurisdiction of the

Federal government or of a State government.

"SEC. 1553. AUTHORIZED LAW ENFORCEMENT ACTIVITIES.

''Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat. 933).''

''(b) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—

''(1) PROSECUTION GUIDELINES.—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien seeking entry into the United States by fraud is consistent with the obligations of the United States under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

''(2) NO PRIVATE RIGHT OF ACTION.—The guidelines required by subparagraph (1), and any internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the United States. This section, the guidelines required by subsection (a), and the process for determining such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

"SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

''(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

''(1) in subclause (I), by striking ', or' at the end and inserting a semicolon;

''(2) in subclause (II), by striking the comma at the end and inserting '; or'; and

''(3) by inserting after subclause (II) the following:

''(III) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, subsection (b) of section 1546, or subsection (b) of section 1547 of title 18, United States Code,'.

''(b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is amended to read as follows:

''(iii) a violation of (or a conspiracy or attempt to violate) section 1541, 1545, 1546, or subsection (b) of section 1547 of title 18, United States Code,'.

''(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to proceedings pending on or after the date of the enactment of this Act, with respect to conduct occurring on or after that date.

"SEC. 210. INCARCERATION OF CRIMINAL ALIENS.

''(a) INSTITUTIONAL REMOVAL PROGRAM.—

''(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the 'Program') or shall develop and implement another program to—

''(A) identify removable criminal aliens in Federal and State correctional facilities;

''(B) ensure that such aliens are not released into the community; and

''(C) remove such aliens from the United States after the completion of their sentences.

''(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

''(b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

''(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress on the participation of States in the Program and in any other program authorized under subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2008 through 2012 to carry out the Program.

"SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

''(a) IN GENERAL.—Section 240B (8 U.S.C. 1229c) is amended—

''(1) in subsection (a)—

''(A) by amending paragraph (1) to read as follows:

''(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.';

''(B) by striking paragraph (3);

''(C) by redesignating paragraph (2) as paragraph (3);

''(D) by adding after paragraph (1) the following:

''(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.';

''(E) in paragraph (3), as redesignated—

''(i) by amending subparagraph (A) to read as follows:

''(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.';

''(ii) by redesignating subparagraphs (B), (C), and (D) as paragraphs (C), (D), and (E), respectively;

''(iii) by adding after subparagraph (A) the following:

''(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.';

(iv) in subparagraph (C), as redesignated, by striking ''subparagraphs (C) and (D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';

(v) in subparagraph (D), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(vi) in subparagraph (E), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(F) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)'';

(2) in subsection (b)(2), by striking ''a period exceeding 60 days'' and inserting ''any period in excess of 45 days'';

(3) by amending subsection (c) to read as follows:

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

''(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien.

''(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

''(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

''(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

''(A) ineligible for the benefits of the agreement;

''(B) subject to the penalties described in subsection (d); and

''(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b)'';

(4) by amending subsection (d) to read as follows:

''(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

''(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

''(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform

the alien of the penalties under this subsection.

''(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

''(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

''(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.''; and

(5) by amending subsection (e) to read as follows:

''(e) ELIGIBILITY.—

''(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

''(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens.''; and

(6) in subsection (f), by adding at the end the following: ''Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.

(b) RULEMAKING.—The Secretary shall promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D (8 U.S.C. 1324d) is amended—

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(c) INELIGIBILITY FOR RELIEF.—

''(1) IN GENERAL.—Unless a timely motion to reconsider under section 240(c)(6) or a timely motion to reopen under section 240(c)(7) is granted, an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for a period of 10 years after the alien's departure from the United States.

''(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

''(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

''(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.''.

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal entered on or after such date.

SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY CERTAIN ALIENS.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5)—in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in the United States not as an alien lawfully admitted for permanent residence'';

(2) in subsection (g)(5)—in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in the United States not as an alien lawfully admitted for permanent residence''; and

(3) in subsection (y)—

(A) in the header, by striking ''Admitted Under Nonimmigrant Visas'' and inserting ''not Lawfully Admitted for Permanent Residence'';

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

''(B) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).'';

(C) in paragraph (2), by striking ''under a nonimmigrant visa'' and inserting ''but not lawfully admitted for permanent residence''; and

(D) in paragraph (3)(A), by striking ''admitted to the United States under a nonimmigrant visa'' and inserting ''lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence''.

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

(a) IN GENERAL.—Section 3291 of title 18, United States Code, is amended to read as follows:

''SEC. 3291. IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, passport, and naturalization offenses.''.

SEC. 215. DIPLOMATIC SECURITY SERVICE.

(a) Section 2709(a)(1) of title 22, United States Code, is amended to read as follows:

''(1) conduct investigations concerning—

''(A) illegal passport or visa issuance or use;

''(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

''(C) violations of chapter 77 of title 18, United States Code; and

''(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in paragraph (9) of section 7 of title 18, United States Code, except as that jurisdiction relates to the premises of United States military missions and related residences;''.

(b) CONSTRUCTION.—Nothing in this section shall be construed to limit the investigative authority of any other Federal department or agency.

SEC. 216. STREAMLINED PROCESSING OF BACKGROUND CHECKS CONDUCTED FOR IMMIGRATION BENEFITS.

(a) INFORMATION SHARING; INTERAGENCY TASK FORCE.—Section 105 (8 U.S.C. 1105) is amended by adding at the end the following:

''(e) INTERAGENCY TASK FORCE.—

''(1) IN GENERAL.—The Secretary of Homeland Security and the Attorney General shall establish an interagency task force to resolve cases in which an application or petition for an immigration benefit conferred under this Act has been delayed due to an outstanding background check investigation for more than 2 years after the date on which such application or petition was initially filed.

''(2) MEMBERSHIP.—The interagency task force established under paragraph (1) shall include representatives from Federal agencies with immigration, law enforcement, or national security responsibilities under this Act.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Federal Bureau of Investigation such sums as are necessary for each fiscal year, 2008 through 2012 for enhancements to existing systems for conducting background and security checks necessary to support immigration security and orderly processing of applications.

(c) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Federal Bureau of Investigation on behalf of United States Citizenship and Immigration Services.

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated

with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps that the Director of the Federal Bureau of Investigation is taking to expedite background and security checks that have been pending for more than 180 days.

SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary may reimburse States and units of local government for costs associated with processing undocumented criminal aliens through the criminal justice system, including—

(1) indigent defense;

(2) criminal prosecution;

(3) autopsies;

(4) translators and interpreters; and

(5) courts costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROCESSING CRIMINAL ILLEGAL ALIENS.—There are authorized to be appropriated $400,000,000 for each of the fiscal years 2008 through 2013 to carry out subsection (a).

(2) COMPENSATION UPON REQUEST.—Section 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as follows:

''(5) There are authorized to be appropriated to carry out this subsection—

''(A) such sums as may be necessary for fiscal year 2008;

''(B) $750,000,000 for fiscal year 2009;

''(C) $850,000,000 for fiscal year 2010; and

''(D) $950,000,000 for each of the fiscal years 2011 through 2013.''.

(c) TECHNICAL AMENDMENT.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—The Secretary may provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) GRANTS AUTHORIZED.—The Secretary may award grants to Indian tribes with lands adjacent to an international border of the United States that have been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access of Border Patrol agents on tribal lands;

(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving such access through cooperation with tribal authorities; and

(4) identifies grants provided by the Department for Indian tribes, either directly or through State or local grants, relating to border security expenses.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 220. ALTERNATIVES TO DETENTION.

The Secretary shall conduct a study of—

(1) the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs, in ensuring alien appearance at court and compliance with removal orders;

(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States; and

(3) other alternatives to detention, including—

(A) release on an order of recognizance;

(B) appearance bonds; and

(C) electronic monitoring devices.

SEC. 221. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

(a) IN GENERAL.—Section 287(g) (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (2), by adding at the end the following: 'If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security.'; and

(2) in paragraph (4), by adding at the end the following: 'The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.'.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)), is amended—

(1) in subparagraph (A), by amending clause (viii) to read as follows: '(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.'; and

(2) in subparagraph (B)(i), by amending subclause (II) to read as follows: '(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.'.''

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting '(other than a citizen described in section 204(a)(1)(A)(viii))' after 'citizen of the United States' each place that phrase appears.

SEC. 223. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL CUSTODY.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.) is amended by adding after section 240C the following new section:

''SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO FEDERAL CUSTODY.

''(a) TRANSFER.—If the head of a law enforcement entity of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension or arrest of an alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

''(1) shall—

''(A) deem the request to include the inquiry to verify immigration status described in section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(c)), and expeditiously inform the requesting entity whether such individual is an alien lawfully admitted to the United States or is otherwise lawfully present in the United States; and

''(B) if the individual is an alien who is not lawfully admitted to the United States or otherwise is not lawfully present in the United States—

''(i) take the illegal alien into the custody of the Federal Government not later than 72 hours after—

''(I) the conclusion of the State charging process or dismissal process; or

''(II) the illegal alien is apprehended, if no State charging or dismissal process is required; or

''(ii) request that the relevant State or local law enforcement agency temporarily detain or transport the alien to a location for transfer to Federal custody; and

''(2) shall designate at least 1 Federal, State, or local prison or jail or a private contracted prison or detention facility within each State as the central facility for that State to transfer custody of aliens to the Department of Homeland Security.

''(b) REIMBURSEMENT—

''(1) IN GENERAL.—The Secretary of Homeland Security shall reimburse a State, or a political subdivision of a State, for expenses, as verified by the Secretary, incurred by the State or political subdivision in the detention and transportation of an alien as described in subparagraphs (A) and (B) of subsection (c)(1).

''(2) COST COMPUTATION.—Compensation provided for costs incurred under subparagraphs (A) and (B) of subsection (c)(1) shall be—

''(A) the product of—

''(i) the average daily cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State); multiplied by

''(ii) the number of days that the alien was in the custody of the State or political subdivision; plus

''(B) the cost of transporting the alien from the point of apprehension or arrest to the location of detention, and if the location of detention and of custody transfer are different, to the custody transfer point; plus

''(C) the cost of uncompensated emergency medical care provided to a detained alien during the period between the time of transmittal of the request described in subsection (c) and the time of transfer into Federal custody.

''(c) REQUIREMENT FOR APPROPRIATE SECURITY.—The Secretary of Homeland Security shall ensure that—

''(1) aliens incarcerated in a Federal facility pursuant to this section are held in facilities which provide an appropriate level of security; and

''(2) if practicable, aliens detained solely for civil violations of Federal immigration law are separated within a facility or facilities.

''(d) REQUIREMENT FOR SCHEDULE.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transportation of apprehended aliens from the custody of those States, and political subdivisions of States, which routinely submit requests described in subsection (c), into Federal custody.

''(e) AUTHORITY FOR CONTRACTS.—

''(1) IN GENERAL.—The Secretary of Homeland Security may enter into contracts or cooperative agreements with appropriate State and local law enforcement and detention agencies to implement this section.

''(2) DETERMINATION BY SECRETARY.—Prior to entering into a contract or cooperative agreement with a State or political subdivision of a State under paragraph (1), the Secretary shall determine whether the State, or if appropriate, the political subdivision in which the agencies are located, has in place any formal or informal policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373). The Secretary shall not allocate any of the funds made available under this section to any State or political subdivision that has in place a policy that violates such section.''.

(b) AUTHORIZATION OF APPROPRIATIONS FOR THE DETENTION AND TRANSPORTATION TO FEDERAL CUSTODY OF ALIENS NOT LAWFULLY PRESENT.—There are authorized to be appropriated $850,000,000 for fiscal year 2008 and each subsequent fiscal year for the detention and removal of aliens not lawfully present in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting ''section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),' after 'section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),''; and

(2) by inserting ''section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),'' after ''section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),''.

SEC. 225. COOPERATIVE ENFORCEMENT PROGRAMS.

Not later than 2 years after the date of the enactment of this Act, the Secretary shall negotiate and execute, where practicable, a cooperative enforcement agreement described in section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) with at least 1 law enforcement agency in each State, to train law enforcement officers in the detection and apprehension of individuals engaged in transporting, harboring, sheltering, or encouraging aliens in violation of section 274 of such Act (8 U.S.C. 1324).

SEC. 226. EXPANSION OF THE JUSTICE PRISONER AND ALIEN TRANSFER SYSTEM.

Not later than 60 days after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that such System provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such aliens for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of seats allocated to them under the System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes of the number of seats that each metropolitan area is allocated under this System for such aliens and modifies such allocation if necessary.

SEC. 227. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 208 of this Act, to reflect the serious nature of such offenses.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the United States Sentencing Commission shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this section.

SEC. 228. CANCELLATION OF VISAS.

Section 222(g) (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary'';

(B) by inserting ''or otherwise violated any of the terms of the nonimmigrant classification in which the alien was admitted,'' before ''such visa''; and

(C) by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence''.

SEC. 229. JUDICIAL REVIEW OF VISA REVOCATION.

(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking 'There shall be no means of judicial review' and all that follows and inserting the following: 'Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation, provided that the revocation is executed by the Secretary.'.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to all revocations made on or after such date.

TITLE III—WORKSITE ENFORCEMENT

Sec. 301. Purposes.
Sec. 302. Unlawful employment of aliens.
Sec. 303. Effective date.
Sec. 304. Disclosure of certain taxpayer information to assist in immigration enforcement.
Sec. 305. Increasing security and integrity of Social Security cards.
Sec. 306. Increasing security and integrity of identity documents.
Sec. 307. Voluntary advanced verification program to combat identity theft.
Sec. 308. Responsibilities of the Social Security Administration.
Sec. 309. Immigration enforcement support by the Internal Revenue Service and the Social Security Administration.
Sec. 310. Authorization of appropriations.

TITLE III—WORKSITE ENFORCEMENT

SEC. 301. PURPOSES.

(a) To continue to prohibit the hiring, recruitment, or referral of unauthorized aliens.

(b) To require that each employer take reasonable steps to verify the identity and work authorization status of all its employees, without regard to national origin and citizenship status.

(c) To authorize the Secretary of Homeland Security to access records of other federal agencies for the purposes of confirming identity, authenticating lawful presence and preventing identity theft and fraud related to unlawful employment.

(d) To ensure that the Commissioner of Social Security has the necessary authority to provide information to the Secretary of Homeland Security that would assist in the enforcement of the immigration laws.

(e) To authorize the Secretary of Homeland Security to confirm issuance of state identity documents, including driver's licenses, and to obtain and transmit individual photographic images held by states for identity authentication purposes.

(f) To collect information on employee hires.

(g) To electronically secure a social security number in the Employment Eligibility Verification System (EEVS) at the request of an individual who has been confirmed to be the holder of that number, and to prevent fraudulent use of the number by others.

(h) To provide for record retention of EEVS inquiries, to prevent identity fraud and employment authorization fraud.

(i) To employ fast track regulatory and procurement procedures to expedite implementation of this Title and pertinent sections of the INA for a period of two years from enactment.

(j) To establish the following:

(1) a document verification process requiring employers to inspect, copy, and retain identity and work authorization documents;

(2) an EEVS requiring employers to obtain confirmation of an individual's identity and work authorization;

(3) procedures for employers to register for the EEVS and to confirm work eligibility through the EEVS;

(4) a streamlined enforcement procedure to ensure efficient adjudication of violations of this Title;

(5) a system for the imposition of civil penalties and their enforcement, remission or mitigation;

(6) an enhancement of criminal and civil penalties;

(7) increased coordination of information and enforcement between the Internal Revenue Service and the Department of Homeland Security regarding employers who have violations related to the employment of unauthorized aliens;

(8) increased penalties under the Internal Revenue Code for employers who have violations relating to the employment of unauthorized aliens.

SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended to read as follows:

''(a) Making Employment of Unauthorized Aliens Unlawful—

''(1) IN GENERAL.—It is unlawful for an employer—

''(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing or with reckless disregard that the alien is an unauthorized alien (as

defined in subsection (b)(1)) with respect to such employment; or

''(B) to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsections (c) and (d).

''(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after hiring an alien for employment, to continue to employ the alien in the United States knowing or with reckless disregard that the alien is (or has become) an unauthorized alien with respect to such employment.

''(3) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, an employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (b)(1)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

''(A) By regulation, the Secretary may require, for purposes of ensuring compliance with the immigration laws, that an employer include in a written contract, subcontract, or exchange an effective and enforceable requirement that the contractor or subcontractor adhere to the immigration laws of the United States, including use of EEVS.

''(B) The Secretary may establish procedures by which an employer may obtain confirmation from the Secretary that the contractor or subcontractor has registered with the EEVS and is utilizing the EEVS to verify its employees.

''(C) The Secretary may establish such other requirements for employers using contractors or subcontractors as the Secretary deems necessary to prevent knowing violations of this paragraph.

''(4) APPLICATION TO FEDERAL GOVERNMENT.—For purposes of this section, the term 'employer' includes entities in any branch of the Federal Government.

''(5) DEFENSE.—An employer that establishes that it has complied in good faith with the requirements of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and subsection (d) has established an affirmative defense that the employer has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral, however:

''(A) until such time as the Secretary has required an employer to participate in the EEVS or such participation is permitted on a voluntary basis pursuant to subsection (d), a defense is established without a showing of compliance with subsection (d); and

''(B) to establish a defense, the employer must also be in compliance with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c), (d), and (k).

''(6) An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards, procedures or instructions issued by the Secretary. Such standards, procedures or instructions shall be objective and verifiable.

''(b) DEFINITIONS—

''(1) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

''(A) an alien lawfully admitted for permanent residence; or

''(B) authorized to be so employed by this Act or by the Secretary.

''(2) DEFINITION OF EMPLOYER.—For purposes of this section, the term 'employer' means any person or entity hiring, recruiting, or referring an individual for employment in the United States.

''(c) DOCUMENT VERIFICATION REQUIREMENTS.—Any employer hiring, recruiting, or referring an individual for employment in the United States shall take all reasonable steps to verify that the individual is authorized to work in the United States, including the requirements of subsection (d) and the following paragraphs:

''(1) Attestation after examination of documentation.

''(A) IN GENERAL.—The employer must attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the identity and work authorization status of the individual by examining—

''(i) a document described in subparagraph (B); or

''(ii) a document described in subparagraph (C) and a document described in subparagraph (D). Such attestation may be manifested by a handwritten or electronic signature. An employer has complied with the requirement of this paragraph with respect to examination of documentation if the employer has followed applicable regulations and any written procedures or instructions provided by the Secretary and if a reasonable person would conclude that the documentation is genuine and establishes the employee's identity and authorization to work, taking into account any information provided to the employer by the Secretary, including photographs.

''(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

''(i) United States passport, or passport card issued pursuant to the Secretary of State's authority under 22 U.S.C. 211a;

''(ii) permanent resident card or other document issued by the Secretary or Secretary of State to aliens authorized to work in the United States, if the document—

''(I) contains a photograph of the individual, biometric data, such as fingerprints, or such other personal identifying information relating to the individual as the Secretary finds, by regulation, sufficient for the purposes of this subsection;

''(II) is evidence of authorization for employment in the United States; and

''(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

''(iii) a temporary interim benefits card valid under section 218C(c) of the Immigration and Nationality Act, as amended by section 602 of the Comprehensive Immigration Reform Act of 2007, bearing a photograph and an expiration date, and issued by the Secretary to aliens applying for temporary worker status under the Z-visa.

''(C) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph includes—

''(i) an individual's driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, provided that the issuing State or entity has certified to the Secretary of Homeland Security that it is in compliance with the minimum standards required under section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13) (49 U.S.C. 30301 note) and implementing regulations issued by the Secretary of Homeland Security once those requirements become effective;

''(ii) an individual's driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States which is not compliant with section 202 of the REAL ID Act of 2005 if—

''(I) the driver's license or identity card contains the individual's photograph as well as the individual's name, date of birth, gender, height, eye color and address,

''(II) the card has been approved for this purpose in accordance with timetables and procedures established by the Secretary pursuant to subsection (c)(1)(F) of this section, and

''(III) the card is presented by the individual and examined by the employer in combination with a U.S. birth certificate, or a Certificate of Naturalization, or a Certificate of Citizenship, or such other documents as may be prescribed by the Secretary,

''(iii) for individuals under 16 years of age who are unable to present a document listed in clause (i) or (ii), documentation of personal identity of such other type as the Secretary finds provides a reliable means of identification, provided it contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

''(iv) other documentation evidencing identity as identified by the Secretary in his discretion, with notice to the public provided in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document, contains security features that make the document as resistant to tampering, counterfeiting, and fraudulent use as the documents listed in (B)(i), B(ii), or (C)(i).

''(D) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—The following documents may be accepted as evidence of employment authorization—

''(i) a social security account number card issued by the Commissioner of Social Security (other than a card which specifies on its face that the card is not valid for employment in the United States). The Secretary, in consultation with the Commissioner of Social Security, may require by publication of a notice in the Federal Register that only a social security account number card described in Section 305 of this Title be accepted for this purpose; or

''(ii) any other documentation evidencing authorization of employment in the United States which the Secretary declares, by publication in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

''(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary shall, with notice to the public provided in the Federal Register, prohibit or restrict the use of that document or class of documents for purposes of this subsection.

''(F) After June 1, 2013, no driver's license or state identity card may be accepted if it does not comply with the REAL ID Act of 2005. This paragraph (c)(1)(F) shall have no effect on paragraphs (c)(1)(B), (c)(1)(C)(iii), (c)(1)(C)(iv), or (c)(1)(D).

''(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a handwritten or electronic signature.

''(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the employer

must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security (or persons designated by the Secretary), the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

''(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, seven years after the date of the recruiting or referral; and

''(B) in the case of the hiring of an individual—

''(i) seven years after the date of such hiring; or

''(ii) two years after the date the individual's employment is terminated, whichever is earlier.

''(4) Copying of documentation and recordkeeping required.

''(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche, microfilm, or electronic copy as prescribed in paragraph (3), but only (except as otherwise permitted under law) for the purposes of complying with the requirements of this subsection. Such copies shall reflect the signatures of the employer and the employee, as well as the date of receipt.

''(B) The employer shall also maintain records of Social Security Administration correspondence regarding name and number mismatches or no-matches and the steps taken to resolve such issues.

''(C) The employer shall maintain records of all actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue that raises reasonable doubt as to the validity of the alien's identity or work authorization.

''(D) The employer shall maintain such records as prescribed in this subsection. The Secretary may prescribe the manner of recordkeeping and may require that additional records be kept or that additional documents be copied and maintained. The Secretary may require that these documents be transmitted electronically, and may develop automated capabilities to request such documents.

''(5) PENALTIES—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e)(4)(B).

''(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

''(7) The employer shall use the procedures for document verification set forth in this paragraph for all employees without regard to national origin or citizenship status.

''(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM—

''(1) IN GENERAL.—The Secretary, in cooperation and consultation with the Secretary of State, the Commissioner of Social Security, and the states, shall implement and specify the procedures for EEVS. The participating employers shall timely register with EEVS and shall use EEVS as described in subsection (d)(5).

''(2) IMPLEMENTATION SCHEDULE—

''(A) As of the date of enactment of this section, the Secretary in his discretion, with notice to the public provided in the Federal Register, is authorized to require any employer or industry which the Secretary determines to be part of the critical infrastructure, a federal contractor, or directly related to the national security or homeland security of the United States to participate in the EEVS. This requirement may be applied to both newly hired and current employees. The Secretary shall notify employers subject to this subparagraph 30 days prior to EEVS.

''(B) No later than 6 months after the date of enactment of this section, the Secretary shall require additional employers or industries to participate in the EEVS. This requirement shall be applied to new employees hired, and current employees subject to reverification because of expiring work authorization documentation or expiration of immigration status, on or after the date on which the requirement takes effect. The Secretary, by notice in the Federal Register, shall designate these employers or industries, in his discretion, based upon risks to critical infrastructure, national security, immigration enforcement, or homeland security needs.

''(C) No later than 18 months after the date of enactment of this section, the Secretary shall require all employers to participate in the EEVS with respect to newly hired employees and current employees subject to reverification because of expiring work authorization documentation or expiration of immigration status.

''(D) No later than three years after the date of enactment of this section, all employers shall participate in the EEVS with respect to new employees, all employees whose identity and employment authorization have not been previously verified through EEVS, and all employees in Z status who have not previously presented a secure document evidencing their Z status. The Secretary may specify earlier dates for participation in the EEVS in his discretion for some or all classes of employer or employee.

''(E) The Secretary shall create the necessary systems and processes to monitor the functioning of the EEVS, including the volume of the workflow, the speed of processing of queries, and the speed and accuracy of responses. These systems and processes shall be audited by the Government Accountability Office 9 months after the date of enactment of this section and 24 months after the date of enactment of this section. The Government Accountability Office shall report the results of the audits to Congress.

''(3) PARTICIPATION IN EEVS.—The Secretary has the following discretionary authority to require or to permit participation in the EEVS—

''(A) To permit any employer that is not required to participate in theEEVS to do so on a voluntary basis;

''(B) To require any employer that is required to participate in the EEVS with respect to its newly hired employees also to do so with respect to its current workforce if the Secretary has reasonable cause to believe that the employer has engaged in any violation of the immigration laws.

''(4) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required under this subsection to participate in the EEVS and fails to comply with the requirements of such program with respect to an individual—

''(A) such failure shall be treated as a violation of subsection (a)(1)(B) of this section with respect to that individual, and

'(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A) or (a)(2) of this section.

''Subparagraph (B) shall not apply in any prosecution under subsection 274A(f)(1).

''(5) PROCEDURES FOR PARTICIPANTS IN THE EEVS—

''(A) IN GENERAL.—An employer participating in the EEVS must register in the EEVS and conform to the following procedures in the event of hiring, recruiting, or referring any individual for employment in the United States:

''(i) REGISTRATION OF EMPLOYERS.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers must follow to register in the EEVS. In prescribing these procedures, the Secretary shall have authority to require employers to provide:

''(I) employer's name;

''(II) employer's Employment Identification Number (EIN);

''(III) company address;

''(IV) name, position and social security number of the employer's employees accessing the EEVS; and

''(V) such other information as the Secretary deems necessary to ensure proper use and security of the EEVS.

The Secretary shall require employers to undergo such training as the Secretary deems necessary to ensure proper use and security of the EEVS. To the extent practicable, such training shall be made available electronically.

''(ii) PROVISION OF ADDITIONAL INFORMATION.—The employer shall obtain from the individual (and the individual shall provide) and shall record in such manner as the Secretary may specify—

''(I) an individual's social security account number,

''(II) if the individual does not attest to United States nationality under subsection (c)(2) of this section, such identification or authorization number established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

''(III) such other information as the Secretary may require to determine the identity and work authorization of an employee.

''(iii) PRESENTATION OF DOCUMENTATION.—The employer, and the individual whose identity and employment eligibility are being confirmed, shall fulfill the requirements of subsection (c) of this section.

''(iv) PRESENTATION OF BIOMETRICS.—Employers who are enrolled in the Voluntary Advanced Verification Program to Combat Identity Theft under section 307 of this Title shall, in addition to documentary evidence of identity and work eligibility, electronically provide the fingerprints of the individual to the Department of Homeland Security.

''(B) SEEKING CONFIRMATION.—

''(i) The employer shall use the EEVS to provide to the Secretary all required information in order to obtain confirmation of the identity and employment eligibility of any individual no earlier than the date of hire and no later than on the first day of employment (or recruitment or referral, as the case may be). An employer may not, however, make the starting date of an individual's employment contingent on the receipt of a confirmation of the identity and employment eligibility.

''(ii) For reverification of an employee with a limited period of work authorization (including Z card holder), all required verification procedures must be complete on the date the employee's work authorization expires.

''(iii) For initial verification of an employee hired before the employer is subject to the employment eligibility verification system, all required procedures must be complete on such date as the Secretary shall specify in accordance with subparagraph (d)(2)(D).

''(iv) The Secretary shall provide, and the employer shall utilize, as part of EEVS, a method of communicating notices and requests for information or action on the part of the employer with respect to expiring work authorization or status and other matters. Additionally, the Secretary shall provide a method of notifying employers of a

confirmation, nonconfirmation or a notice that further action is required ('further action notice'). The employer shall communicate to the individual that is the subject of the verification all information provided to the employer by the EEVS for communication to the individual.

''(C) CONFIRMATION OR NONCONFIRMATION.—

''(i) INITIAL RESPONSE.—The verification system shall provide a confirmation, a nonconfirmation, or a further action notice of an individual's identity and employment eligibility at the time of the inquiry, unless for technological reasons or due to unforeseen circumstances, the EEVS is unable to provide such confirmation or further action notice. In such situations, the system shall provide confirmation or further action notice within 3 business days of the initial inquiry. If providing confirmation or further action notice, the EEVS shall provide an appropriate code indicating such confirmation or such further action notice.

''(ii) CONFIRMATION UPON INITIAL INQUIRY.—When the employer receives an appropriate confirmation of an individual's identity and work eligibility under the EEVS, the employer shall record the confirmation in such manner as the Secretary may specify.

''(iii) Further action notice upon initial inquiry and secondary verification—

''(I) FURTHER ACTION NOTICE.—If the employer receives a further action notice of an individual's identity or work eligibility under the EEVS, the employer shall inform the individual without delay for whom the confirmation is sought of the further action notice and any procedures specified by the Secretary for addressing the further action notice. The employee must acknowledge in writing the receipt of the further action notice from the employer.

''(II) CONTEST.—Within ten business days from the date of notification to the employee, the employee must contact the appropriate agency to contest the further action notice and, if the Secretary so requires, appear in person at the appropriate Federal or state agency for purposes of verifying the individual's identity and employment authorization. The Secretary, in consultation with the Commissioner of Social Security and other appropriate Federal and State agencies, shall specify an available secondary verification procedure to confirm the validity of information provided and to provide a final confirmation or nonconfirmation. An individual contesting a further action notice must attest under penalty of perjury to his identity and employment authorization.

''(III) NO CONTEST.—If the individual does not contest the further action notice within the period specified in subparagraph (5)(C)(iii)(II), a final nonconfirmation shall issue. The employer shall then record the nonconfirmation in such manner as the Secretary may specify.

''(IV) FINALITY.—The EEVS shall provide a final confirmation or nonconfirmation within 10 business days from the date of the employee's contesting of the further action notice. As long as the employee is taking the steps required by the Secretary and the agency that the employee has contacted to resolve a further action notice, the Secretary shall extend the period of investigation until the secondary verification procedure allows the Secretary to provide a final confirmation or nonconfirmation. If the employee fails to take the steps required by the Secretary and the appropriate agency, a final nonconfirmation may be issued to that employee.

''(V) RE-EXAMINATION.—Nothing in this section shall prevent the Secretary from reexamining a case where a final confirmation has been provided if subsequently received information indicates that the individual may not be work authorized.

''In no case shall an employer terminate employment of an individual solely because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final and the period to timely file an administrative appeal has passed, and in the case where an administrative appeal has been denied, the period to timely file a petition for judicial review has passed. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation. An individual's failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

''(D) CONSEQUENCES OF NONCONFIRMATION.—

''(i) TERMINATION OF CONTINUED EMPLOYMENT.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate employment (or recruitment or referral) of the individual, unless the individual files an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph and the Secretary or the Commissioner stays the final nonconfirmation notice pending the resolution of the administrative appeal.

''(ii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the employer continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation (unless the individual filed an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph and the Secretary of the Commissioner stayed the final nonconfirmation notice pending the resolution of the administrative appeal), a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2) of this section. The previous sentence shall not apply in any prosecution under subsection (f)(1) of this section.

''(E) OBLIGATION TO RESPOND TO QUERIES AND ADDITIONAL INFORMATION.—

''(i) Employers are required to comply with requests from the Secretary through EEVS for information, including queries concerning current and former employees that relate to the functioning of the EEVS, the accuracy of the responses provided by the EEVS, and any suspected fraud or identity theft in the use of the EEVS. Failure to comply with such a request is a violation of section (a)(1)(B).

''(ii) Individuals being verified through EEVS may be required to take further action to address irregularities identified in the documents relied upon for purposes of employment verification. The employer shall communicate to the individual any such requirement for further actions and shall record the date and manner of such communication. The individual must acknowledge in writing the receipt of this communication from the employer. Failure to communicate such a requirement is a violation of section (a)(1)(B).

''(iii) The Secretary is authorized, with notice to the public provided in the Federal Register, to implement, clarify, and supplement the requirements of this paragraph in order to facilitate the functioning of the EEVS or to prevent fraud or identity theft in the use of the EEVS.

''(F) IMPERMISSIBLE USE OF THE EEVS.—

''(i) An employer may not use the EEVS to verify an individual prior to extending to the individual an offer of employment.

''(ii) An employer may not require an individual to verify the individual's own employment eligibility through the EEVS as a condition of extending to that individual an offer of employment. Nothing in this paragraph shall be construed to prevent an employer from encouraging an employee or a prospective employee from verifying the employee's or a prospective employee's own employment eligibility prior to obtaining employment pursuant to paragraph (5)(H).

''(iii) An employer may not terminate an individual's employment solely because that individual has been issued a further action notice.

''(iv) An employer may not take the following actions solely because an individual has been issued a further action notice:

''(I) reduce salary, bonuses or other compensation due to the employee;

''(II) suspend the employee without pay;

''(III) reduce the hours that the employee is required to work if such reduction is accompanied by a reduction in salary, bonuses or other compensation due to the employee, except that, with the agreement of the employee, an employer may provide an employee with reasonable time off without pay in order to contest and resolve the further action notice received by the employee;

''(IV) deny the employee the training necessary to perform the employment duties for which the employee has been hired.

''(v) An employer may not, in the course of utilizing the procedures for document verification set forth in subsection (c), require that a prospective employee present additional documents or different documents than those prescribed under that subsection.

''(vi) The Secretary of Homeland Security shall develop the necessary policies and procedures to monitor employers' use of the EEVS and their compliance with the requirements set forth in this section. Employers are required to comply with requests from the Secretary for information related to any monitoring, audit or investigation undertaken pursuant to this subparagraph.

''(vii) The Secretary of Homeland Security, in consultation with the Secretary of Labor, shall establish and maintain a process by which any employee (or any prospective employee who would otherwise have been hired) who has reason to believe that an employer has violated subparagraphs (i)–(v) may file a complaint against the employer.

''(viii) Any employer found to have violated subparagraphs (i)–(v) shall pay a civil penalty of up to $10,000 for each violation.

''(ix) This paragraph is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in a judicial proceeding.

''(x) No later than 3 months after the date of enactment of this section, the Secretary of Homeland Security, in cooperation with the Secretary of Labor and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities and remedies under this section.

''(I) In order to carry out the campaign under this paragraph, the Secretary of Homeland Security may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign.

''(II) There are authorized to be appropriated to carry out this paragraph

$40,000,000 for each fiscal year 2007 through 2009.

''(G) Based on a regular review of the EEVS and the document verification procedures to identify fraudulent use and to assess the security of the documents being used to establish identity or employment authorization, the Secretary in consultation with the Commissioner of Social Security may modify by Notice published in the Federal Register the documents that must be presented to the employer, the information that must be provided to EEVS by the employer, and the procedures that must be followed by employers with respect to any aspect of the EEVS if the Secretary in his discretion concludes that the modification is necessary to ensure that EEVS accurately and reliably determines the work authorization of employees while providing protection against fraud and identity theft.

''(H) Subject to appropriate safeguards to prevent misuse of the system, the Secretary in consultation with the Commissioner of Social Security, shall establish secure procedures to permit an individual who seeks to verify the individual's own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the EEVS.

''(6) Protection from liability for actions taken on the basis of information provided by the confirmation system.—No employer participating in the EEVS shall be liable under any law for any employment–related action taken with respect to the employee in good faith reliance on information provided through the confirmation system.

''(7) ADMINISTRATIVE REVIEW.—

''(A) IN GENERAL.—An individual who receives a final nonconfirmation notice may, not later than 15 days after the date that such notice is received, file an administrative appeal of such final notice. An individual who did not timely contest a further action notice may not avail himself of this paragraph. Unless the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, specifies otherwise, all administrative appeals shall be filed as follows:

''(i) NATIONALS OF THE UNITED STATES.—An individual claiming to be a national of the United States shall file the administrative appeal with the Commissioner.

''(ii) ALIENS.—An individual claiming to be an alien authorized to work in the United States shall file the administrative appeal with the Secretary.

''(B) REVIEW FOR ERROR.—The Secretary and the Commissioner shall each develop procedures for resolving administrative appeals regarding final nonconfirmations based upon the information that the individual has provided, including any additional evidence that was not previously considered. Appeals shall be resolved within 30 days after the individual has submitted all evidence relevant to the appeal. The Secretary and the Commissioner may, on a case by case basis for good cause, extend this period in order to ensure accurate resolution of an appeal before him. Administrative review under this paragraph (7) shall be limited to whether the final nonconfirmation notice is supported by the weight of the evidence.

''(C) ADMINISTRATIVE RELIEF.—The relief available under this paragraph (7) is limited to an administrative order upholding, reversing, modifying, amending, or setting aside the final nonconfirmation notice. The Secretary or the Commissioner shall stay the final nonconfirmation notice pending the resolution of the administrative appeal unless the Secretary or the Commissioner determines that the administrative appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay and terminates the stay.

''(D) DAMAGES, FEES AND COSTS.—No money damages, fees or costs may be awarded in the administrative review process, and no court shall have jurisdiction to award any damages, fees or costs relating to such administrative review under the Equal Access to Justice Act or any other law.

''(8) JUDICIAL REVIEW.—

''(A) EXCLUSIVE PROCEDURE.—Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and 1651 of title 28, no court shall have jurisdiction to consider any claim against the United States, or any of its agencies, officers, or employees, challenging or otherwise relating to a final nonconfirmation notice or to the EEVS, except as specifically provided by this paragraph. Judicial review of a final nonconfirmation notice is governed only by chapter 158 of title 28, except as provided below.

''(B) REQUIREMENTS FOR REVIEW OF A FINAL NONCONFIRMATION NOTICE.—With respect to review of a final nonconfirmation notice under subsection (a), the following requirements apply:

''(i) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the completion of the administrative appeal.

''(ii) VENUE AND FORMS.—The petition for review shall be filed with the United States Court of Appeals for the judicial circuit wherein the petitioner resided when the final nonconfirmation notice was issued. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

''(iii) SERVICE.—The respondent is either the Secretary of Homeland Security or the Commissioner of Social Security, but not both, depending upon who issued (or affirmed) the final nonconfirmation notice. In addition to serving the respondent, the petitioner must also serve the Attorney General.

''(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result. The court of appeals may set an expedited briefing schedule.

''(v) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall decide the petition only on the administrative record on which the final nonconfirmation order is based. The burden shall be on the petitioner to show that the final nonconfirmation decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.

''(vi) STAY.—The court of appeals shall stay the final nonconfirmation notice pending its decision on the petition for review unless the court determines that the petition for review is frivolous, unlikely to succeed on the merits, or filed for purposes of delay.

''(C) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final nonconfirmation order only if—

''(1) the petitioner has exhausted all administrative remedies available to the alien as of right, and

''(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

''(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual petitioner.

''(9) MANAGEMENT OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

''(A) IN GENERAL.—The Secretary is authorized to establish, manage and modify an EEVS that shall—

''(i) respond to inquiries made by participating employers at any time through the internet concerning an individual's identity and whether the individual is authorized to be employed;

''(ii) maintain records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to employers as evidence of their compliance with their obligations under the EEVS; and

''(iii) provide information to, and request action by, employers and individuals using the system, including notifying employers of the expiration or other relevant change in an employee's employment authorization, and directing an employer to convey to the employee a request to contact the appropriate Federal or State agency.

''(B) DESIGN AND OPERATION OF SYSTEM.—The EEVS shall be designed and operated—

''(i) to maximize its reliability and ease of use by employers consistent with insulating and protecting the privacy and security of the underlying information;

''(ii) to respond accurately to all inquiries made by employers on whether individuals are authorized to be employed and to register any times when the system is unable to receive inquiries;

''(iii) to maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

''(iv) to allow for auditing use of the system to detect fraud and identify theft, and to preserve the security of the information in all of the system, including but not limited to the following:

''(I) to develop and use algorithms to detect potential identity theft, such as multiple uses of the same identifying information or documents;

''(II) to develop and use algorithms to detect misuse of the system by employers and employees;

''(III) to develop capabilities to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system;

''(IV) to audit documents and information submitted by potential employees to employers, including authority to conduct interviews with employers and employees;

''(v) to confirm identity and work authorization through verification of records maintained by the Secretary, other Federal departments, states, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, as determined necessary by the Secretary, including:

''(I) records maintained by the Social Security Administration as specified in (D);

''(II) Birth and death records maintained by vital statistics agencies of any state or other United States jurisdiction;

''(III) Passport and visa records (including photographs) maintained by the United States Department of State;

''(IV) State driver's license or identity card information (including photographs) maintained by State department of motor vehicles.

''(vi) to confirm electronically the issuance of the employment authorization or identity document and to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee. If in exceptional cases a photograph is not available from the issuer, the Secretary shall specify a temporary alternative procedure for confirming the authenticity of the document.

''(C) The Secretary is authorized, with notice to the public provided in the Federal Register, to issue regulations concerning operational and technical aspects of the EEVS and the efficiency, accuracy, and security of the EEVS.

''(D) ACCESS TO INFORMATION.—

''(i) Notwithstanding any other provision of law, the Secretary of Homeland Security shall have access to relevant records described at paragraph (9)(B)(v), for the purposes of preventing identity theft and fraud in the use of the EEVS and enforcing the provisions of this section governing employment verification. A State or other non-Federal jurisdiction that does not provide such access shall not be eligible for any grant or other program of financial assistance administered by the Secretary.

''(ii) The Secretary, in consultation with the Commissioner of Social Security and other appropriate Federal and State agencies, shall develop policies and procedures to ensure protection of the privacy and security of personally identifiable information and identifiers contained in the records accessed pursuant to this paragraph and subparagraph (d)(5)(E)(i). The Secretary, in consultation with the Commissioner and other appropriate Federal and State agencies, shall develop and deploy appropriate privacy and security training for the Federal and State employees accessing the records pursuant to this paragraph and subparagraph (d)(5)(E)(i).

''(iii) The Chief Privacy Officer of the Department of Homeland Security shall conduct regular privacy audits of the policies and procedures established under subparagraph (9)(D)(ii), including any collection, use, dissemination, and maintenance of personally identifiable information and any associated information technology systems, as well as scope of requests for this information. The Chief Privacy Officer shall review the results of the audits and recommend to the Secretary and the Privacy and Civil Liberties Oversight Board any changes necessary to improve the privacy protections of the program.

''(E) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

''(i) As part of the EEVS, the Secretary shall establish a reliable, secure method, which, operating through the EEVS and within the time periods specified, compares the name, alien identification or authorization number, or other relevant information provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, whether the Secretary's records verify United States citizenship), and such other information as the Secretary may prescribe.

''(ii) As part of the EEVS, the Secretary shall establish a reliable, secure method, which, operating through the EEVS, displays the digital photograph described in paragraph (d)(9)(B)(vi).

''(iii) The Secretary shall have authority to prescribe when a confirmation, nonconfirmation or further action notice shall be issued.

''(iv) The Secretary shall perform regular audits under the EEVS, as described in paragraph (d)(9)(B)(iv) of this section and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner of Social Security pursuant to section 304 of the Comprehensive Immigration Act of 2007, for the purposes of this Title and of immigration enforcement in general.

''(v) The Secretary shall make appropriate arrangements to allow employers who are otherwise unable to access the EEVS to use Federal Government facilities or public facilities in order to utilize the EEVS.

''(F) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the EEVS, the Secretary of State shall provide to the Secretary access to passport and visa information as needed to confirm that a passport or passport card presented under section (c)(1)(B) belongs to the subject of the EEVS check, or that a passport or visa photograph matches an individual;

''(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretaries of Homeland Security and State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

''(10) LIMITATION ON USE OF THE EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this subsection for any purpose other than for the enforcement and administration of the immigration laws, anti-terrorism laws, or for enforcement of Federal criminal law related to the functions of the EEVS, including prohibitions on forgery, fraud and identity theft.

''(11) UNAUTHORIZED USE OR DISCLOSURE OF INFORMATION.—Any employee of the Department of Homeland Security or another Federal or State agency who knowingly uses or discloses the information assembled under this subsection for a purpose other than one authorized under this section shall pay a civil penalty of $5,000–$50,000 for each violation.

''(12) CONFORMING AMENDMENT.—Public Law 104–208, div. C, title IV, subtitle A, sections 401–05 are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to allow or continue to allow the participation of Basic Pilot employers in the EEVS established by this subsection.

''(13) FUNDS.—In addition to any appropriated funds, the Secretary is authorized to use funds provided in sections 286(m) and (n), for the maintenance and operation of the EEVS. EEVS shall be considered an immigration adjudication service for purposes of sections 286(m) and (n).

''(14) The employer shall use the procedures for EEVS specified in this section for all employees without regard to national origin or citizenship status.

''(e) COMPLIANCE.—

''(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Homeland Security shall establish procedures—

''(A) for individuals and entities to file complaints respecting potential violations of subsection (a) or (g)(1);

''(B) for the investigation of those complaints which the Secretary deems it appropriate to investigate; and

''(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Secretary determines to be appropriate.

''(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

''(A) immigration officers shall have reasonable access to examine evidence of any employer being investigated; and

''(B) immigration officers designated by the Secretary may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph, the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as a contempt thereof. Failure to cooperate with such subpoena shall be subject to further penalties, including but not limited to further fines and the voiding of any mitigation of penalties or termination of proceedings under subsection (e)(3)(B).

''(3) COMPLIANCE PROCEDURES.—

''(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section or the requirements of this section, including but not limited to subsections (b), (c), (d) and (k), and determines that further proceedings are warranted, the Secretary shall issue to the employer concerned a written notice of the Department's intention to issue a claim for a monetary or other penalty. Such pre-penalty notice shall:

''(i) describe the violation;

''(ii) specify the laws and regulations allegedly violated;

''(iii) disclose the material facts which establish the alleged violation; and

''(iv) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

''(B) REMISSION OR MITIGATION OF PENALTIES.—Whenever any employer receives written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may file, within 15 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary. If the Secretary finds that such fine, penalty, or forfeiture was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate the same upon such terms and conditions as the Secretary deems reasonable and just, or order termination of any proceedings relating thereto. Such mitigating circumstances may include, but need not be limited to, good faith compliance and participation in, or agreement to participate in, the EEVS, if not otherwise required.

''This subparagraph shall not apply to an employer that has or is engaged in a pattern or practice of violations of subsection (a)(1)(A), (a)(1)(B), or (a)(2) or of any other requirements of this section.

''(C) PENALTY CLAIM.—After considering evidence and representations, if any, offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the

findings of fact and conclusions of law on which the determination is based. If the Secretary determines that there was a violation, the Secretary shall issue the final determination with a written penalty claim. The penalty claim shall specify all charges in the information provided under clauses (i) through (iii) of subparagraph (A) and any mitigation or remission of the penalty that the Secretary deems appropriate.

''(4) CIVIL PENALTIES.—

''(A) Hiring or continuing to employ unauthorized aliens. Any employer that violates any provision of subsection (a)(1)(A) or (a)(2) shall:

''(1) pay a civil penalty of $5,000 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

''(2) if an employer has previously been fined under subsection (e)(4)(A), pay a civil penalty of $10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

''(3) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of $25,000 for each unauthorized alien with respect to which a violation of either subsection has occurred. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to comply with a previously issued and final order under this section.

''(4) if an employer has previously been fined more than twice under subsection (e)(4)(A), pay a civil penalty of $75,000 for each alien with respect to which a violation of either subsection (a)(1) or (a)(2) occurred;

''(5) In addition to any penalties previously assessed, an employer who fails to comply with a previously issued and final order under this section shall be fined $75,000 for each violation.

''(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with any requirement of subsection (b), (c), and (d), shall pay a civil penalty as follows:

''(1) pay a civil penalty of $1,000 for each violation;

''(2) if an employer has previously been fined under subsection (e)(4)(B), pay a civil penalty of $2,000 for each violation; and

''(3) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of $5,000 for each violation. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to comply with a previously issued and final order under this section;

''(4) if an employer has previously been fined more than twice under subsection (e)(4)(B), pay a civil penalty of $15,000 for each violation.

''(5) In addition to any penalties previously assessed, an employer who fails to comply with a previously issued and final order under this section shall be fined $15,000 for each violation.

''(C) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (g)(2). All penalties in this section may be adjusted every four years to account for inflation as provided by law.

''(D) The Secretary is authorized to reduce or mitigate penalties imposed upon employers, based upon factors including, but not limited to, the employer's hiring volume, compliance history, good-faith implementation of a compliance program, participation in a temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

''(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that it is in compliance with this section, or has instituted a program to come into compliance. Within 60 days of receiving a notice from the Secretary requiring such a certification, the employer's chief executive officer or similar official with responsibility for, and authority to bind the company on, all hiring and immigration compliance notices shall certify under penalty of perjury that the employer is in conformance with the requirements of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and with subsection (d), pertaining to the EEVS (once that system is implemented according to the requirements of (d)(1)), and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c), (d), and (k), or that the employer has instituted a program to come into compliance with these requirements. At the request of the employer, the Secretary may extend the 60-day deadline for good cause. The Secretary is authorized to publish in the Federal Register standards or methods for such certification, require specific recordkeeping practices with respect to such certifications, and audit the records thereof at any time. This authority shall not be construed to diminish or qualify any other penalty provided by this section.

''(6) JUDICIAL REVIEW.—

''(A) Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and 1651 of title 28, no court shall have jurisdiction to consider a final determination or penalty claim issued under subparagraph (3)(C), except as specifically provided by this paragraph. Judicial review of a final determination under paragraph (e)(4) is governed only by chapter 158 of title 28, except as specifically provided below. The filing of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The Secretary is authorized to require that petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

(B) REQUIREMENTS FOR REVIEW OF A FINAL DETERMINATION.—With respect to judicial review of a final determination or penalty claim issued under subparagraph (3)(C), the following requirements apply:

(i) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the final determination or penalty claim issued under subparagraph (3)(C).

(ii) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit wherein the employer resided when the final determination or penalty claim was issued. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(iii) SERVICE.—The respondent is either the Secretary of Homeland Security or the Commissioner of Social Security, but not both, depending upon who issued (or affirmed) the final nonconfirmation notice. In addition to serving the respondent, the petitioner must also serve the Attorney General.

(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(v) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall decide the petition only on the administrative record on which the final determination is based. The burden shall be on the petitioner to show that the final determination was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.

''(C) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final determination under subparagraph (3)(C) only if—

(1) the petitioner has exhausted all administrative remedies available to the petitioner as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

''(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual petitioner.

''(7) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (6), the Attorney General may file suit to enforce compliance with the final determination in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

''(8) LIENS.—

''(A) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or refuses to pay such liability and fails to file a petition for review (if applicable) as provided in paragraph 6 of this subsection, such liability is a lien in favor of the United States on all property and rights to property of such person as if the liability of such person were a liability for a tax assessed under the Internal Revenue Code of 1986. If a petition for review is filed as provided in paragraph 6 of this subsection, the lien (if any) shall arise upon the entry of a final judgment by the court. The lien continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated.

''(B) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered,

recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

''(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be considered a debt as defined by 28 U.S.C. Sec. 3002 and enforceable pursuant to the Federal Debt Collection Procedures Act.

''(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

''(1) CRIMINAL PENALTY.—Any employer which engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $75,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both.

''(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

''(g) PROHIBITION OF INDEMNITY BONDS.—

''(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

''(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

''(h) GOVERNMENT CONTRACTS.—

''(1) EMPLOYERS.—Whenever an employer who does not hold Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be subject to debarment from the receipt of Federal contracts, grants, or cooperative agreements for a period of up to two years in accordance with the procedures and standards prescribed by the Federal Acquisition Regulations. The Secretary or the Attorney General shall advise the Administrator of General Services of any such debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for the period of the debarment. The Administrator of General Services, in consultation with the Secretary and Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

''(2) CONTRACTORS AND RECIPIENTS.—Whenever an employer who holds Federal contracts, grants, or cooperative agreements is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be subject to debarment from the receipt of Federal contracts, grants, or cooperative agreements for a period of up to two years in accordance with the procedures and standards prescribed by the Federal Acquisition Regulations. Prior to debarring the employer, the Secretary, in cooperation with the Administrator of General Services, shall advise all agencies holding contracts, grants, or cooperative agreements with the employer of the proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to two years. After consideration of the views of agencies holding contracts, grants or cooperative agreements with the employer, the Secretary may, in lieu of proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to two years, waive operation of this subsection, limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to seek debarment of the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

''(3) Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

''(4) Inadvertent violations of record-keeping or verification requirements, in the absence of any other violations of this section, shall not be a basis for determining that an employer is a repeat violator for purposes of this subsection.

''(i) MISCELLANEOUS PROVISIONS.—

''(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

''(2) PREEMPTION.—The provisions of this section preempt any State or local law that requires the use of the EEVS in a fashion that conflicts with Federal policies, procedures or timetables, or that imposes civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

''(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the general fund of the Treasury.

''(k) NO-MATCH NOTICE.—

''(1) For the purpose of this subsection, a no-match notice is written notice from the Social Security Administration (SSA) to an employer reporting earnings on a Form W–2 that employees' names or corresponding social security account numbers fail to match SSA records. The Secretary, in consultation with the Commissioner of the Social Security Administration, is authorized to establish by regulation requirements for verifying the identity and work authorization of employees who are the subject of no-match notices. The Secretary shall establish by regulation a reasonable period during which an employer must allow an employee who is subject to a no-match notice to resolve the no-match notice with no adverse employment consequences to the employee. The Secretary may also establish penalties for noncompliance by regulation.

''(l) CHALLENGES TO VALIDITY.—

''(1) IN GENERAL.—Any right, benefit, or claim not otherwise waived or limited pursuant to this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

''(A) whether this section, or any regulation issued to implement this section, violates the Constitution of the United States; or

''(B) whether such a regulation issued by or under the authority of the Secretary to implement this section, is contrary to applicable provisions of this section or was issued in violation of title 5, chapter 5, United States Code.

''(2) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 90 days after the date the challenged section or regulation described in clause (i) or (ii) of subparagraph (A) is first implemented.

''(3) CLASS ACTIONS.—The court may not certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action under this section.

''(4) RULE OF CONSTRUCTION.—In determining whether the Secretary's interpretation regarding any provision of this section is contrary to law, a court shall accord to such interpretation the maximum deference permissible under the Constitution.

''(5) NO ATTORNEYS' FEES—Notwithstanding any other provision of law, the court shall not award fees or other expenses to any person or entity based upon any action relating to this Title brought pursuant to this section (l).''

SEC. 303. EFFECTIVE DATE.

This title shall become effective on the date of enactment.

SEC. 304. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO ASSIST IN IMMIGRATION ENFORCEMENT.

(a) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY—

''(A) IN GENERAL.—From taxpayer identity information or other information which has been disclosed or otherwise made available to the Social Security Administration and upon written request by the Secretary of Homeland Security (in this paragraph referred to as the 'Secretary'), the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security—

''(i) the taxpayer identity information of each person who has filed an information return required by reason of section 6051 after calendar year 2005 and before the date specified in subparagraph (D) which contains—

''(I) 1 (or any greater number the Secretary shall request) taxpayer identifying number, name, and address of any employee (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security, or

''(II) 2 (or any greater number the Secretary shall request) names, and addresses of employees (within the meaning of such section), with the same taxpayer identifying number,

''and the taxpayer identity of each such employee, and

''(ii) the taxpayer identity of each person who has filed an information return required by reason of section 6051 after calendar year 2005 and before the date specified in subparagraph (D) which contains the taxpayer identifying number (assigned under section 6109)

of an employee (within the meaning of section 6051)—

''(I) who is under the age of 14 (or any lesser age the Secretary shall request), according to the records maintained by the Commissioner of Social Security,

''(II) whose date of death, according to the records so maintained, occurred in a calendar year preceding the calendar year for which the information return was filed,

''(III) whose taxpayer identifying number is contained in more than one (or any greater number the Secretary shall request) information return filed in such calendar year, or

''(IV) who is not authorized to work in the United States, according to the records maintained by the Commissioner of Social Security, 'and the taxpayer identity and date of birth of each such employee.

''(B) REIMBURSEMENT.—The Secretary shall transfer to the Commissioner the funds necessary to cover the additional cost directly incurred by the Commissioner in carrying out the searches or manipulations requested by the Secretary.''

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

''(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such Department, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

''The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6103(a)(3) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: ''The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).''.

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking ''or (17)'' both places it appears and inserting ''(17), or (21)''; and

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after 'subparagraph (A)'.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(c) REPEAL OF REPORTING REQUIREMENTS

(1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—subsection (c) of section 290 of the immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(2) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104†208; 8 U.S.C. 1360 note) is repealed.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to disclosures made after the date of the enactment of this Act.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a)(2), shall be made with respect to calendar year 2007.

(3) REPEALS.—The repeals made by subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) FRAUD-RESISTANT, TAMPER-RESISTANT AND WEAR-RESISTANT SOCIAL SECURITY CARDS.—

(1) ISSUANCE.—

(A) PRELIMINARY WORK.—Not later than 180 days after the date of enactment of this title, the Commissioner of Social Security shall begin work to administer and issue fraud-resistant, tamper-resistant Social Security cards.

(B) COMPLETION.—Not later than two years after the date of enactment of this title, the Commissioner of Social Security shall only issue fraud-resistant, tamper-resistant and wear-resistant Social Security cards.

(2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended to read—

''(i) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be fraud-resistant, tamper-resistant and wear-resistant.''.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(4) REPORT ON FEASIBILITY OF INCLUDING BIOMETRICS.—Within 180 days of enactment, the Commissioner of Social Security shall provide to Congress a report on the utility, costs and feasibility of including a photograph and other biometric information on the Social Security card.

(b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

''(ii) The Commissioner of Social Security shall not issue a replacement Social Security card to any individual unless the Commissioner determines that the purpose for requiring the issuance of the replacement document is legitimate.''.

SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDENTITY DOCUMENTS.

(a) PURPOSE.—The Secretary of Homeland Security, shall establish the State Records Improvement Grant Program (referred to in this section as the ''Program''), under which the Secretary may award grants to States for the purpose of advancing the purposes of this Act and of issuing or implementing plans to issue driver's license and identity cards that can be used for purposes of verifying identity under this Title and that comply with the state license requirements in section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(b) States that do not certify their intent to comply with the REAL ID Act and implementing regulations or that do not submit a compliance plan acceptable to the Secretary are not eligible for grants under the Program. Driver's license or identification cards issued by States that do not comply with REAL ID may not be used to verify identity under this Title except under conditions approved by the Secretary.

(c) GRANTS AND CONTRACTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to a State to provide assistance to such State agency to meet the deadlines for the issuance of a driver's license which meets the requirements of section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2007 through 2011.

(3) COMPETITIVE BASIS.—The Secretary shall give priority to States whose REAL ID implementation plan is compatible with the employment verification systems, processes, and implementation schedules set forth in Section 302, as determined by the Secretary. Minimum standards for compatibility will include the ability of the State to promptly verify the document and provide access to the digital photograph displayed on the document.

(4) Where the Secretary of Homeland Security determines that compliance with REAL ID and with the requirements of the employment verification system can best be met by awarding grants or contracts to a State, a group of States, a government agency, or a private entity, the Secretary may utilize Program funds to award such a grant, grants, contract or contracts.

(5) On an expedited basis, the Secretary shall award grants or contracts for the purpose of improving the accuracy and electronic availability of states' records of births, deaths, driver's licenses, and of other records necessary for implementation of EEVS and as otherwise necessary to advance the purposes of this Act.

(d) USE OF FUNDS.—Grants or contracts awarded pursuant to the Program may be used to assist State compliance with the REAL ID requirements, including, but not limited to—

(1) upgrade and maintain technology;

(2) obtain equipment;

(3) hire additional personnel;

(4) cover operational costs, including overtime; and

(5) such other resources as are available to assist that agency.

(e) APPLICATION.—

(1) IN GENERAL.—Each eligible state seeking 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 reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

(f) CONDITIONS.—All grants under the Program shall be conditioned on the recipient providing REAL ID compliance certification and implementation plans acceptable to the Secretary which include—

(1) adopting appropriate security measures to protect against improper issuance of driver's licenses and identity cards, tampering

with electronic issuance systems, and identity theft as the Secretary may prescribe;

(2) ensuring introduction and maintenance of such security features and other measures necessary to make the documents issued by recipient resistant to tampering, counterfeiting, and fraudulent use as the Secretary may prescribe; and

(3) ensuring implementation and maintenance of such safeguards for the security of the information contained on these documents as the Secretary may prescribe.

All grants shall also be conditioned on the recipient agreeing to adhere to the timetables and procedures for issuing REAL ID driver's licenses and identification cards as specified in section 274A(c)(1)(F). All grants shall further be conditioned on the recipient agreeing to implement the requirements of this Act and any implementing regulations to the satisfaction of the Secretary of Homeland Security.

(g) AUTHORIZATION OF APPROPRIATIONS.—IN GENERAL.—There is authorized to be appropriated $300,000,000 for each of fiscal years 2007 through 2011 to carry out the provisions of this section.

(h) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

(i) ADDITIONAL USES.—Amounts authorized under this section may also be used to assist in sharing of law enforcement information between States and the Department of Homeland Security for purposes of implementing Section 602(c), at the discretion of the Secretary.

SEC. 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM TO COMBAT IDENTITY THEFT.

(a) VOLUNTARY ADVANCED VERIFICATION PROGRAM.—The Secretary shall establish and make available a voluntary program allowing employers to submit and verify an employee's fingerprints for purposes of determining the identity and work authorization of the employee.

(1) IMPLEMENTATION DATE.—No later than 18 months after the date of enactment of this Act, the Secretary shall implement the voluntary advanced verification program and make it available to employers willing to volunteer in the program.

(2) VOLUNTARY PARTICIPATION.—The fingerprint verification program is voluntary; employers are not required to participate in it.

(b) LIMITED RETENTION PERIOD FOR FINGERPRINTS.—

(1) The Secretary shall only maintain fingerprint records of a U.S. Citizen that were submitted by an employer through the EEVS for 10 business days, upon which such records shall be purged from any EEVS-related system unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by a government agency with criminal or other investigative authority.

(2) Exception: For purposes of preventing identity theft or other harm, a U.S. Citizen employee may request in writing that his fingerprint records be retained for employee verification purposes by the Secretary. In such instances of written consent, the Secretary may retain such fingerprint records until notified in writing by the U.S. Citizen of his withdrawal of consent, at which time the Secretary must purge such fingerprint records within 10 business days unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by a government agency with an independent criminal or other investigative authority.

(d) LIMITED USE OF FINGERPRINTS SUBMITTED FOR PROGRAM.—The Secretary and the employer may use any fingerprints taken from the employee and transmitted for querying the EEVS solely for the purposes of verifying identity and employment eligibility during the employee verification process. Such transmitted fingerprints may not be used for any other purpose. This provision does not alter any other provisions regarding the use of non-fingerprint information in the EEVS.

(e) SAFEGUARDING OF FINGERPRINT INFORMATION.—The Secretary, subject to specifications and limitations set forth under this section and other relevant provisions of this Act, shall be responsible for safely and securely maintaining and storing all fingerprints submitted under this program.

SEC. 308. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is amended by adding at the end the following new subparagraphs:

''(I) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—

''(i) As part of the verification system, the Commissioner of Social Security shall, subject to the provisions of section 274A(d) of the Immigration and Nationality Act, establish a reliable, secure method that, operating through the EEVS and within the time periods specified in section 274A(d) of the Immigration and Nationality Act:

''(I) compares the name, social security account number and available citizenship information provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed;

''(II) the correspondence of the name, number, and any other identifying information;

''(III) whether the name and number belong to an individual who is deceased;

''(IV) whether an individual is a national of the United States (when available); and

''(V) whether the individual has presented a social security account number that is not valid for employment.

The EEVS shall not disclose or release social security information to employers through the confirmation system (other than such confirmation or nonconfirmation).

''(ii) SOCIAL SECURITY ADMINISTRATION DATABASE IMPROVEMENTS.—For purposes of preventing identity theft, protecting employees, and reducing burden on employers, and notwithstanding section 6103 of title 26, United States Code, the Commissioner of Social Security, in consultation with the Secretary, shall review the Social Security Administration databases and information technology to identify any deficiencies and discrepancies related to name, birth date, citizenship status, or death records of the social security accounts and social security account holders likely to contribute to fraudulent use of documents, or identity theft, or to affect the proper functioning of the EEVS and shall correct any identified errors. The Commissioner shall ensure that a system for identifying and correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration's databases.

''(iii) NOTIFICATION TO 'FREEZE' USE OF SOCIAL SECURITY NUMBER.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall establish a secure process whereby an individual can request that the Commissioner preclude any confirmation under the EEVS based on that individual's Social Security number until it is reactivated by that individual.''.

SEC. 309. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.

(a) Tightening Requirements for the Provision of Social Security Numbers on Form W–2 Wage and Tax Statements—Section 6724 of the Internal Revenue Code of 1986 (relating to waiver; definitions and special rules) is amended by adding at the end the following new subsection:

''(f) Special rules with respect to social security numbers on withholding exemption certificates.

''(1) Reasonable cause waiver not to apply.

Subsection (a) shall not apply with respect to the social security account number of an employee furnished under section 6051(a)(2).

''(2) EXCEPTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), [paragraph (1)] shall not apply in any case in which the employer—

''(i) receives confirmation that the discrepancy described in section 205(c)(2)(I) of the Social Security Act has been resolved, or

''(ii) corrects a clerical error made by the employer with respect to the social security account number of an employee within 60 days after notification under section 205(c)(2)(1) of the Social Security Act that the social security account number contained in wage records provided to the Social Security Administration by the employer with respect to the employee does not match the social security account number of the employee contained in relevant records otherwise maintained by the Social Security Administration.

''(B) Exception not applicable to frequent offenders. Subparagraph (A) shall not apply—

''(i) in any case in which not less than 50 of the statements required to be made by an employer pursuant to section 6051 either fail to include an employee's social security account number or include an incorrect social security account number, or

''(ii) with respect to any employer who has received written notification under section 205(c)(2)(1) of the Social Security Act during each of the 3 preceding taxable years that the social security account numbers in the wage records provided to the Social Security Administration by such employer with respect to 10 more employees do not match relevant records otherwise maintained by the Social Security Administration.''.

(b) ENFORCEMENT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, shall establish a unit within the Criminal Investigation office of the Internal Revenue Service to investigate violations of the Internal Revenue Code of 1986 related to the employment of individuals who are not authorized to work in the United States.

(2) SPECIAL AGENTS; SUPPORT STAFF.—The Secretary of the Treasury shall assign to the unit a minimum of 10 full-time special agents and necessary support staff and is authorized to employ up to 200 full time special agents for this unit based on investigative requirements and work load.

(3) REPORTS.—During each of the first 5 calendar years beginning after the establishment of such unit and biennially thereafter, the unit shall transmit to Congress a report that describes its activities and includes the number of investigations and cases referred for prosecution.

(c) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—Section 6721 of such Code (relating to failure to file correct information returns) is amended as follows—

(1) in subsection (a)(1)—

(A) by striking ''$50'' and inserting ''$200'', and

(B) by striking ''$250,000'' and inserting ''$1,000,000'',

(2) in subsection (b)(1)(A), by striking ''$15 in lieu of $50'' and inserting ''$60 in lieu of $200'',

(3) in subsection (b)(1)(B), by striking ''$75,000'' and inserting ''$300,000'',

(4) in subsection (b)(2)(A), by striking ''$30 in lieu of $50'' and inserting ''$120 in lieu of $200'',

(5) in subsection (b)(2)(B), by striking ''$150,000'' and inserting ''$600,000'',

(6) in subsection (d)(A) in paragraph (1)—

(A) by striking ''$100,000'' for ''$250,000'' and inserting ''$400,000'' for ''$1,000,000'' in subparagraph (A),

(B) by striking ''$25,000'' for ''$75,000'' and inserting ''$100,000'' for ''$300,000'' in subparagraph (B), and

(C) by striking ''$50,000'' for ''$150,000'' and inserting ''$200,000'' for ''$600,000'' in subparagraph (C),

(D) in paragraph (2)(A), by striking ''$5,000,000'' and inserting ''$2,000,000'', and

(E) in the heading, by striking ''$5,000,000'' and inserting ''$2,000,000'',

(7) in subsection (e)(2)—

(A) by striking ''$100'' and inserting ''$400'',

(B) by striking ''$25,000'' and inserting ''$100,000'' in subparagraph (C)(i), and

(C) by striking ''$100,000'' and inserting ''$400,000'' in subparagraph (C)(ii), and

(8) in subsection (e)(3)(A), by striking ''$250,000'' and inserting ''$1,000,000''.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall apply to failures occurring after December 31, 2006.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out the provisions of this Act, and the amendments made by this Act, including the following appropriations:

(1) In each of the five years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 4500 the number of personnel of the Department of Homeland Security assigned exclusively or principally to an office or offices dedicated to monitoring and enforcing compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c), including compliance with the requirements of the EEVS. These personnel shall perform the following compliance and monitoring activities:

(A) Verify Employment Identification Numbers of employers participating in the EEVS.

(B) Verify compliance of employers participating in the EEVS with the requirements for participation that are prescribed by the Secretary.

(C) Monitor the EEVS for multiple uses of Social Security Numbers and any immigration identification numbers for evidence that could indicate identity theft or fraud.

(D) Monitor the EEVS to identify discriminatory practices.

(E) Monitor the EEVS to identify employers who are not using the system properly, including employers who fail to make appropriate records with respect to their queries and any notices of confirmation, nonconfirmation, or further action.

(F) Identify instances where employees allege that an employer violated their privacy rights.

(G) Analyze and audit the use of the EEVS and the data obtained through the EEVS to identify fraud trends, including fraud trends across industries, geographical areas, or employer size.

(H) Analyze and audit the use of the EEVS and the data obtained through the EEVS to develop compliance tools as necessary to respond to changing patterns of fraud.

(I) Provide employers with additional training and other information on the proper use of the EEVS.

(J) Perform threshold evaluation of cases for referral to the U.S. Immigration and Customs Enforcement and to liaise with the U.S. Immigration and Customs Enforcement with respect to these referrals.

(K) Any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS.

(L) Investigate identity theft and fraud detected through the EEVS and undertake the necessary enforcement actions.

(M) Investigate use of fraudulent documents or access to fraudulent documents through local facilitation and undertake the necessary enforcement actions.

(N) Provide support to the U.S. Citizenship and Immigration Services with respect to the evaluation of cases for referral to the U.S. Immigration and Customs Enforcement.

(O) Perform any other investigations that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS, and undertake any enforcement actions necessary as a result of these investigations.

(2) The appropriations necessary to acquire, install and maintain technological equipment necessary to support the functioning of the EEVS and the connectivity between U.S. Citizenship and Immigration Services and the U.S. Immigration and Customs Enforcement with respect to the sharing of information to support the EEVS and related immigration enforcement actions.

(b) There are authorized to be appropriated to Commissioner of Social Security such sums as may be necessary to carry out the provisions of this Act, including Section 308 of this Act.

TITLE IV—NEW TEMPORARY WORKER PROGRAM

Subtitle A—Seasonal Non-Agricultural and Year-Round Nonimmigrant Temporary Workers

SEC. 401. NONIMMIGRANT TEMPORARY WORKER.

(a) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (H)—

(A) by striking subclause (ii)(b);

(B) by striking ''or (iii)'' and inserting ''(iii)''; and

(C) by striking ''; and the alien spouse'' and inserting ''; or (iv) the alien spouse'';

(2) by striking ''or'' at the end of subparagraph (U);

(3) by striking the period at the end of subparagraph (V) and inserting a semi-colon; and

(4) by inserting at the end the following new subparagraphs—

''(W) [Reserved];

''(X) [Reserved]; or

''(Y) subject to section 218A, an alien having a residence in a foreign country which the alien has no intention of abandoning and who is coming temporarily to the United States—

''(i) to perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(b)(1), (i)(c), or (iii) of subparagraph (H), subparagraph (D), (E), (I), (L), (O), (P), or (R), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States);

''(ii) to perform seasonal non-agricultural labor or services; or

''(iii) as the spouse or child of an alien described in clause (i) or (ii) of this subparagraph.''.

(b) REFERENCES.—All references in the immigration laws as amended by this Title to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act shall be considered a reference to both that section of the Act and to section 101(a)(15)(Y)(ii) of the Act.

(c) EFFECTIVE DATE.—The effective date of the amendment made by subparagraph (1)(A) of subsection (a) shall be the date on which the Secretary of Homeland Security makes the certification described in section 1(a) of this Act.

(d) SUNSET OF Y–1 VISA PROGRAM.—

(1) SUNSET.—Notwithstanding any other provision of this Act, or any amendment made by this Act, no alien may be issued a new visa as a Y–1 nonimmigrant (as defined in section 218B of the Immigration and Nationality Act, as added by section 403) on the date that is 5 years after the date that the first such visa is issued.

(2) CONSTRUCTION.—Nothing in paragraph (1) may be construed to affect issuance of visas to Y–2B nonimmigrants (as defined in such section 218B), under the AgJOBS Act of 2007, as added by subtitle C, under the H–2A visa program, or any visa program other than the Y–1 visa program.

SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.

(a) NEW WORKERS.—Chapter 2 of title II of the Act (8 U.S.C. 1181 et seq.) is amended by striking section 218 and inserting the following:

''SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.

''(a) APPLICATION PROCEDURES.—

''(1) LABOR CERTIFICATION.—The Secretary of Labor shall prescribe by regulation the procedures for a United States employer to obtain a labor certification of a job opportunity under the terms set forth in section 218B.

''(2) PETITION.—The Secretary of Homeland Security shall prescribe by regulation the procedures for a United States employer to petition to the Secretary of Homeland Security for authorization to employ an alien as a Y nonimmigrant worker and the evidence required to demonstrate eligibility for such authorization under the terms set forth in subsection (c).

''(3) Y NONIMMIGRANT VISA.—The Secretary of State and the Secretary of Homeland Security, as appropriate, shall prescribe by regulation the procedures for an alien to apply for a Y nonimmigrant visa and the evidence required to demonstrate eligibility for such visa under the terms set forth in subsection (e).

''(4) REGULATIONS.—The regulations referenced in paragraphs (1), (2), and (3) shall describe, at a minimum—

''(A) the procedures for collection and verification of biometric data from an alien seeking a Y nonimmigrant visa or admission in Y nonimmigrant status; and

''(B) the procedure and standards for validating an employment arrangement between a United States employer and an alien seeking a visa or admission described in (A).

''(b) APPLICATION FOR CERTIFICATION OF A JOB OPPORTUNITY OFFERED TO Y NONIMMIGRANT WORKERS.—An employer desiring to employ a Y nonimmigrant worker shall, with respect to a specific opening that the employer seeks to fill with such a Y nonimmigrant, submit an application for labor certification of the job opportunity filed in accordance with the procedures established by section 218B.

''(c) PETITION TO EMPLOY Y NONIMMIGRANT WORKERS.—

''(1) IN GENERAL.—An employer that seeks authorization to employ a Y nonimmigrant worker must file a petition with the Secretary of Homeland Security. The petition must be accompanied by—

''(A) evidence that the employer has obtained a certification under section 218B from the Secretary of Labor for the position

sought to be filled by a Y nonimmigrant worker and that such certification remains valid;

''(B) evidence that the job offer was and remains valid;

''(C) the name and other biographical information of the alien beneficiary and any accompanying spouse or child; and

''(D) any biometrics from the beneficiary that the Secretary of Homeland Security may require by regulation.

''(2) TIMING OF FILING.—

''(A) IN GENERAL.—A petition under this subsection must be filed with the Secretary of Homeland Security within 180 days of the date of certification under section 218B by the Secretary of Labor of the job opportunity.

''(B) EXPIRATION OF CERTIFICATION.—If a labor certification is not filed in support of a petition under this subsection with the Secretary of Homeland Security within 180 days of the date of certification by the Secretary of Labor, then the certification expires and may not support a Y nonimmigrant petition or be the basis for Y nonimmigrant visa issuance.

''(3) ABILITY TO REQUEST DOCUMENTATION.—The Secretary of Homeland Security may request information to verify the attestations the employer made during the labor certification process, and any other fact relevant to the adjudication of the petition.

''(4) ADJUDICATION OF PETITION.—

''(A) POST-ADJUDICATION ACTION.—After review of the petition, if the Secretary—

''(i) is satisfied that the petition meets all of the requirements of paragraph (1), and any other requirements the Secretary has prescribed in regulations, he may approve the petition and by fax, cable, electronic, or any other means assuring expedited delivery—

''(I) transmit a copy of the notice of action on the petition to the petitioner; and

''(II) in the case of approved petitions, transmit notice of the approval to the Secretary of State;

''(ii) finds that the employer is not eligible or that the petition is otherwise not approvable, the Secretary may—

''(I) deny the petition without seeking additional evidence and inform the petitioner—

''(aa) that the petition was denied and the reason for the denial;

''(bb) of any available process for administrative appeal of the decision; and

''(cc) that the denial is without prejudice to the filing of any subsequent petitions, except as provided in section 218B(e)(4);

''(II) issue a request for documentation of the attestations or any other information or evidence that is material to the petition; or

''(III) audit, investigate or otherwise review the petition in such manner as he may determine and refer evidence of fraud to appropriate law enforcement agencies based on the audit information.

''(B) VALIDITY OF APPROVED PETITION.—An approved petition shall have the same period of validity as the certification described in subsection (c)(1)(A) and expire on the same date that the certification expires, except that the Secretary of Homeland Security may terminate in his discretion an approved petition—

''(i) when he determines that any material fact, including, but not limited to the proffered wage rate, the geographic location of employment, or the duties of the position, has changed in a way that would invalidate the recruitment actions; or

''(ii) when he or the Secretary of Labor makes a finding of fraud or misrepresentation concerning the facts on the petition or any other representation made by the employer before the Secretary of Labor or Secretary of Homeland Security.

''(C) ADMINISTRATIVE REVIEW.—The Secretary of Homeland Security shall authorize a single level of administrative review with the United States Citizenship and Immigration Services Administrative Appeals Office of a petition denial or termination.

''(d) AUTHORIZATION TO GRANT Y NONIMMIGRANT VISA.—

''(1) IN GENERAL.—A consular officer may grant a single-entry temporary visa to a Y nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described in clause (i)(b), (i)(b)(1), (i)(c), or (iii) of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

''(2) APPLICANTS FROM CANADA.—Notwithstanding any waivers of the visa requirement under section 212(a)(7)(B)(i)(II), a national of Canada seeking admission as a Y nonimmigrant will be inadmissible if not in possession of—

''(I) a valid Y nonimmigrant visa; or

''(II) documentation of Y nonimmigrant status, as described in subsection (m).

''(e) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for Y nonimmigrant status if the alien meets the following requirements:

''(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation described in section 101(a)(15)(Y)(i) or (Y)(ii).

''(2) EVIDENCE OF EMPLOYMENT OFFER.—The alien's evidence of employment shall be provided in accordance with the requirements issued by the Secretary of State, in consultation with the Secretary of Labor. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

''(3) FEES—

''(A) PROCESSING FEES.—An alien making an application for a Y nonimmigrant visa shall be required to pay, in addition to any fees charged by the Department of State for processing and adjudicating such visa application, a processing fee in an amount sufficient to recover the full cost to the Secretary of Homeland Security of administrative and other expenses associated with processing the alien's participation in the Y nonimmigrant program, including the costs of production of documentation of evidence under subsection (m).

''(B) STATE IMPACT FEE.—Aliens making an application for a Y–1 nonimmigrant visa shall pay a state impact fee of $500 and an additional $250 for each dependent accompanying or following to join the alien, not to exceed $1,500 per family.

''(C) DEPOSIT AND SPENDING OF FEES.—The processing fees under subparagraph (A) shall be deposited and remain available until expended as provided by sections 286 (m) and (n).

''(D) DEPOSIT AND DISPOSITION OF STATE IMPACT ASSISTANCE FUNDS.—The funds described in subparagraph (B) shall be deposited and remain available as provided by section 286(x).

''(E) CONSTRUCTION.—Nothing in this paragraph shall be construed to affect consular procedures for collection of machine-readable visa fees or reciprocal fees for the issuance of the visa.

''(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status), at the alien's expense, that conforms to generally accepted standards of medical practice.

''(5) APPLICATION CONTENT AND WAIVER.—

''(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the requirements under paragraphs (1) and (2) have been met.

''(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for Y nonimmigrant status, the Secretary of State shall require an alien to provide information concerning the alien's—

''(i) physical and mental health;

''(ii) criminal history, including all arrests and dispositions, and gang membership;

''(iii) immigration history; and

''(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

''(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

''(i) the alien has read and understands all of the questions and statements on the application form;

''(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

''(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

''(6) MUST NOT BE INELIGIBLE.—The alien must not fall within a class of aliens ineligible for Y nonimmigrant status listed under subsection (h).

''(7) MUST NOT BE INADMISSIBLE.—The alien must not be inadmissible as a nonimmigrant to the United States under section 212, except as provided in subsection (f).

''(8) SPOUSE OR CHILD OF Y NONIMMIGRANT.—An alien seeking admission as a derivative Y–3 nonimmigrant must demonstrate, in addition to satisfaction of the requirements of paragraphs (2) through (6)—

''(A) that the annual wage of the principal Y nonimmigrant paid by the principal nonimmigrant's U.S. employer, combined with the annual wage of the principal Y nonimmigrant's spouse where the Y–3 nonimmigrant is a child and the Y nonimmigrant's spouse is a member of the principal Y nonimmigrant's household, is equal to or greater than 150 percent of the U.S. poverty level for a household size equal in size to that of the principal alien (including all dependents, family members supported by the principal alien, and the spouse or child seeking to accompany or join the principal alien), as determined by the Secretary of Health and Human Services for the fiscal year in which the spouse or child's application for a nonimmigrant visa is filed; and

''(B) that the alien's cost of medical care is covered by medical insurance, valid in the United States, carried by the principal Y nonimmigrant alien, the principal Y nonimmigrant's spouse (where the Y–3 nonimmigrant is a child), or the principal Y nonimmigrant alien's employer.

''(f) GROUNDS OF INADMISSIBILITY.—

''(1) WAIVED GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility as a Y nonimmigrant, such alien shall be found to be inadmissible if the alien would be subject to the grounds of inadmissibility under section 601(d)(2).

''(2) WAIVER.—The Secretary may in his discretion waive the application of any provision of section 212(a) of the Act not listed in paragraph (2) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a).

''(g) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien seeking Y nonimmigrant visa or status unless all appropriate background checks have been completed to the satisfaction of the Secretaries of State and Homeland Security.

''(h) GROUNDS OF INELIGIBILITY.—

''(1) IN GENERAL.—An alien is ineligible for a Y nonimmigrant visa or Y nonimmigrant status if the alien is described in section 601(d)(1)(A), (D), (E), (F), or (G) of the Comprehensive Immigration Reform Act of 2007.

''(2) INELIGIBILITY OF DERIVATIVE Y–3 NONIMMIGRANTS.—An alien is ineligible for Y–3 nonimmigrant status if the principal Y nonimmigrant is ineligible under paragraph (1).

''(3) APPLICABILITY TO GROUNDS OF INADMISSIBILITY.—Nothing in this subsection shall be construed to limit the applicability of any ground of inadmissibility under section 212.

''(i) PERIOD OF AUTHORIZED ADMISSION.—

''(1) IN GENERAL.—Aliens admitted to the United States as Y nonimmigrants shall be granted the following periods of admission:

''(A) Y–1 NONIMMIGRANTS.—Except as provided in (2), aliens granted admission as Y–1 nonimmigrants shall be granted an authorized period of admission of two years. Subject to paragraph (4), such two-year period of admission may be extended for two additional two-year periods.

''(B) Y–2B NONIMMIGRANTS.—Aliens granted admission as Y–2B nonimmigrants shall be granted an authorized period of admission of 10 months.

''(2) Y–1 NONIMMIGRANTS WITH Y–3 DEPENDENTS.—A Y–1 nonimmigrant who has accompanying or following-to-join derivative family members in Y–3 nonimmigrant status shall be limited to two two-year periods of admission. If the family members accompany the Y–1 nonimmigrant during the alien's first period of admission the family members may not accompany or join the Y–1 nonimmigrant during the alien's second period of admission. If the Y–1 nonimmigrant's family members accompany or follow to join the Y–1 nonimmigrant during the alien's second period of admission, but not his first period of admission, then the Y–1 nonimmigrant shall not be granted any additional periods of admission in Y nonimmigrant status. The period of authorized admission of a Y–3 nonimmigrant shall expire on the same date as the period of authorized admission of the principal Y–1 nonimmigrant worker.

''(3) SUPPLEMENTARY PERIODS.—Each period of authorized admission described in paragraph (1) shall be supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and, except where such period of authorized admission has been terminated under subsection (j), a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

''(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

''(B) the total period of employment, including such 14-day period, may not exceed the maximum applicable period of admission under paragraph (1).

''(4) EXTENSIONS OF THE PERIOD OF ADMISSION.—

''(A) IN GENERAL.—The periods of authorized admission described in paragraph (1) may not, except as provided in subparagraph (C)(2) of paragraph (1), be extended beyond the maximum period of admission set forth in that paragraph.

''(B) EXTENSION OF Y–1 NONIMMIGRANT STATUS.—A Y–1 nonimmigrant described in paragraph (1)(A) who has spent 24 months in the United States in Y–1 nonimmigrant status may not seek extension or be readmitted to the United States as a Y–1 nonimmigrant unless the alien has resided and been physically present outside the United States for the immediate prior 12 months.

''(5) LIMITATION ON ADMISSION.—

''(A) Y–1 NONIMMIGRANTS.—An alien who has been admitted to the United States in Y–1 nonimmigrant status for a period of two years under paragraph (1)(B), or as the Y–3 nonimmigrant spouse or child of such a Y–1 nonimmigrant, may not be readmitted to the United States as a Y–1 or Y–3 nonimmigrant after expiration of such period of authorized admission, regardless of whether the alien was employed or present in the United States for all or a part of such period.

''(B) Y–2B NONIMMIGRANTS.—An alien who has been admitted to the United States in Y–2B nonimmigrant status may not, after expiration of the alien's period of authorized admission, be readmitted to the United States as a Y nonimmigrant after expiration of the alien's period of authorized admission, regardless of whether the alien was employed or present in the United States for all or only a part of such period, unless the alien has resided and been physically present outside the United States for the immediately preceding two months.

''(C) READMISSION WITH NEW EMPLOYMENT.—Nothing in this paragraph shall be construed to prevent a Y nonimmigrant, whose period of authorized admission has not yet expired or been terminated under subsection (j), and who leaves the United States in a timely fashion after completion of the employment described in the petition of the Y nonimmigrant's most recent employer, from reentering the United States as a Y nonimmigrant to work for a new employer, if the alien and the new employer have complied with all applicable requirements of this section and section 218B.

''(6) INTERNATIONAL COMMUTERS.—An alien who maintains actual residence and place of abode outside the United States and commutes, on days the alien is working, into the United States to work as a Y–1 nonimmigrant, shall be granted an authorized period of admission of three years. The limitations described in paragraphs (3) and (4) shall not apply to commuters described in this paragraph.

''(j) TERMINATION.—

''(1) IN GENERAL.—The period of authorized admission of a Y nonimmigrant shall terminate immediately if:

''(A) the Secretary of Homeland Security determines that the alien was not eligible for such Y nonimmigrant status at the time of visa application or admission;

''(B)(i) the alien commits an act that makes the alien removable from the United States under section 237;

''(ii) the alien becomes inadmissible under section 212 (except as provided in subsection (f)); or

''(iii) the alien becomes ineligible under subsection (h);

''(C) the alien uses the documentation of his or her Y nonimmigrant status issued under subsection (m) for unlawful or fraudulent purposes;

''(D) subject to paragraph (2), the alien is unemployed within the United States for—

''(i) 60 or more consecutive days;

''(ii) in the case of a Y–1 nonimmigrant, an aggregate period of 120 days, provided that the alien's 14-day period to lawfully depart the United States shall not be considered to begin until the date that the alien has been provided notice of the termination; or

''(iii) in the case of a Y–2B nonimmigrant, an aggregate period of 30 days, provided that the alien's 14-day period to lawfully depart the United States shall not be considered to begin until the date that the alien has been provided notice of the termination; or;

''(E) the alien is a Y–3 nonimmigrant whose spouse or parent in Y–1 nonimmigrant status is an alien described in subparagraphs (A), (B), (C), or (D).

''(2) EXCEPTION.—The period of authorized admission of a Y nonimmigrant shall not terminate for unemployment under subparagraph (1)(D) if the alien submits documentation to the Secretary of Homeland Security that establishes that such unemployment was caused by—

''(A) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

''(B) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

''(C) any other period of temporary unemployment that is the direct result of a force majeure event.

''(3) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under paragraph (1) shall be required to leave the United States immediately and register such departure at a designated port of departure in a manner to be prescribed by the Secretary.

''(4) INVALIDATION OF DOCUMENTATION.—Any documentation that is issued by the Secretary of Homeland Security under subsection (m) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

''(k) VISITS OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a Y nonimmigrant—

''(i) may travel outside of the United States; and

''(ii) may be readmitted for a period not more than the remaining time left until the alien accrues the maximum period of admission set forth in subsection (i), and without having to obtain a new visa if:

''(A) the period of authorized admission has not expired or been terminated;

''(B) the alien is the bearer of valid documentary evidence of Y nonimmigrant status that satisfies the conditions set forth in subsection (m); and

''(C) the alien is not subject to the bars on extension or admission described in subsection (l).

''(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the most recent period of authorized admission in the United States.

''(l) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted Y nonimmigrant status if—

''(1) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

''(2) the alien is inadmissible as a nonimmigrant, except for those grounds previously waived under subsection (f); or

''(3) the granting of such status would allow the alien to exceed limitations on stay in the United States in Y status described in subsection (i).

''(m) EVIDENCE OF NONIMMIGRANT STATUS.—Each Y nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

''(1) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and other biometric identifiers that can be authenticated;

''(2) shall, during the alien's authorized period of admission under subsection (i), serve as a valid entry document for the purpose of applying for admission to the United States—

''(A) instead of a passport and visa if the alien—

''(i) is a national of a foreign territory contiguous to the United States; and

''(ii) is applying for admission at a land border port of entry; and

''(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

''(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

''(4) shall be issued to the Y nonimmigrant by the Secretary of Homeland Security promptly after such alien's admission to the United States as a Y nonimmigrant and reporting to the employer's worksite under subsection (q) or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

''(n) PERMANENT BARS FOR OVERSTAYS.—

''(1) IN GENERAL.—Any Y nonimmigrant who remains beyond his or her initial authorized period of admission is permanently barred from any future benefits under the immigration laws, except—

''(A) asylum under section 208(a);

''(B) withholding of removal under section 241(b)(3); or

''(C) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

''(2) EXCEPTION.—Overstay of the authorized period of admission may be excused in the discretion of the Secretary where it is demonstrated that:

''(A) the period of overstay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstances; and

''(B) the alien has not otherwise violated his Y nonimmigrant status.

''(o) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY—

''(1) ILLEGAL ENTRY.—Any alien who after the date of the enactment of this section, unlawfully enters, attempts to enter, or crosses the border, and is physically present in the United States after such date in violation of the immigration laws, is barred permanently from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

''(2) OVERSTAY.—Any alien, other than a Y nonimmigrant, who, after the date of the enactment of this section remains unlawfully in the United States beyond the period of authorized admission, is barred for a period of ten years from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

''(3) RELIEF.—Notwithstanding the bar in paragraph (1) or (2), an alien may apply for—

''(A) asylum under section 208(a);

''(B) withholding of removal under section 241(b)(3); or

''(C) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

''(4) EXCEPTION.—Overstay of the authorized period of admission may be excused in the discretion of the Secretary where it is demonstrated that:

''(A) the period of overstay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstances; and

''(B) the alien has not otherwise violated his nonimmigrant status.

''(p) PORTABILITY.—A Y nonimmigrant worker, who was previously issued a visa or otherwise provided Y nonimmigrant status, may accept a new offer of employment with a subsequent employer, if—

''(1) the position being offered the Y nonimmigrant has been certified by the Secretary of Labor under section 218B and the employer complies with all requirements of this section and section 218B;

''(2) the alien, after lawful admission to the United States, did not work without authorization; and

''(3) the subsequent employer has notified the Secretary of Homeland Security under subsection (q) of the Y nonimmigrant's change of employment.

''(q) REPORTING OF START AND TERMINATION OF EMPLOYMENT.—

''(1) START OF Y WORKER EMPLOYMENT.—A Y nonimmigrant shall report in the manner prescribed by the Secretary of Homeland Security to the employer whose job offer was the basis for issuance of the alien's Y nonimmigrant visa within 7 days of admission into the United States.

''(2) EMPLOYER NOTIFICATION REQUIREMENT.—An employer shall within three days make notification in the manner prescribed by the Secretary of Homeland Security, of the following events:

''(A) a Y nonimmigrant worker has reported for work pursuant to paragraph (1) after admission in Y nonimmigrant status;

''(B) a Y nonimmigrant worker has changed jobs under subsection (r) and started employment with the employer;

''(C) the employment of a Y nonimmigrant worker has terminated; or

''(D) a Y nonimmigrant worker on whose behalf the employer has filed a petition under this subsection that has been approved by the Secretary of Homeland Security has failed to report for work within three days of the employment start date agreed upon between the employer and the Y nonimmigrant.

''(3) VERIFICATION.—An employer shall provide upon request of the Secretary of Homeland Security verification that an alien who has been granted admission as a Y nonimmigrant worker was or continues to be employed by the employer.

''(4) FINE.—Any employer that fails to comply with the notification requirements of this subsection shall pay to the Secretary of Homeland Security a fine, in an amount and under procedures established by the Secretary in regulation.

''(r) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under this section to threaten the alien beneficiary of such petition with the withdrawal of such a petition in retaliation for the beneficiary's exercise of a right protected by section 218B.

''(s) CHANGE OF STATUS—

''(1) IN GENERAL—

''(A) A Y nonimmigrant may apply to change status to another nonimmigrant status, subject to section 248 and if otherwise eligible.

''(B) No alien admitted to the United States under the immigration laws in a classification other than Y nonimmigrant status may change status to Y nonimmigrant status.

''(C) An alien in Y nonimmigrant status may not change status to any other Y nonimmigrant status.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification under subparagraphs (1)(B), (C), or (D) from leaving the United States and applying at a U.S. consulate for the desired nonimmigrant visa, subject to all applicable eligibility requirements, in the appropriate Y classification.

''(t) VISITATION OF Y NONIMMIGRANT BY SPOUSE OR CHILD WITHOUT A Y–3 NONIMMIGRANT VISA.—Nothing in this section shall be construed to prohibit the spouse or child of a Y nonimmigrant worker to be admitted to the United States under any other existing legal basis for which the spouse or child may qualify.

''(u) CHANGE OF ADDRESS.—A Y nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification.''.

(b) CONFORMING AMENDMENT REGARDING CREATION OF TREASURY ACCOUNTS.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by inserting at the end the following new subsections—

''(w) TEMPORARY WORKER PROGRAM ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Temporary Worker Program Account'. Notwithstanding any other section of this Act, there shall be deposited into the account all fines and civil penalties collected under sections 218A, 218B, or 218F and Title VI of [name of Act], except as specifically provided otherwise in such sections.

''(2) USE OF FUNDS.—Amounts deposited into the Temporary Worker Program Account shall remain available until expended as follows:

''(A) for the administration of the Standing Commission on Immigration and Labor Markets, established under section 409 of the Comprehensive Immigration Reform Act of 2007; and

''(B) after amounts needed by the Standing Commission on Immigration and Labor Markets have been expended, for the Secretaries of Labor and Homeland Security, as follows:

''(i) one-third to the Secretary of Labor to carry out the Secretary of Labor's functions and responsibilities, including enforcement of labor standards under sections 218A, 218B, and 218F, and under applicable labor laws including the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). Such activities shall include random audits of employers that participate in the Y visa program; and

''(ii) two-thirds to the Secretary of Homeland Security to improve immigration services and enforcement.

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'State Impact Assistant Account'.

''(2) SOURCE OF FUNDS.—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State Impact Assistance fees collected under sections 218A(e)(3)(B) and section 601(e)(6)(C) of the Comprehensive Immigration Reform Act of 2007.

''(3) USE OF FUNDS.—Amounts deposited into the State Impact Assistance Account may only be used to carry out the State Impact Assistance Grant Program established under paragraph (4).

''(4) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish the State Impact Assistance Grant Program (referred to in this subsection as the 'Program'), under which the Secretary may award grants to States to provide health and

education services to noncitizens in accordance with this paragraph.

''(B) STATE ALLOCATIONS.—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

''(i) NONCITIZEN POPULATION.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

''(I) $5,000,000; or

''(II) after adjusting for allocations under subclause (I), the percentage of the amount to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

''(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distributed under this clause that is equal to—

''(I) the growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census; divided by

''(II) the average growth rate in noncitizen resident population for the 20 States during such 3-year period.

''(iii) LEGISLATIVE APPROPRIATIONS.—The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

''(C) FUNDING FOR LOCAL GOVERNMENT.—

''(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

''(ii) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

''(iii) EXCEPTION.—If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

''(iv) UNEXPENDED FUNDS.—Any grant funds distributed by a State to a unit of local government that remain unexpended as of the end of the grant period shall revert to the State for redistribution to another unit of local government.

''(D) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction directly, or through contracts with eligible services providers, including—

''(i) health care providers;

''(ii) local educational agencies; and

''(iii) charitable and religious organizations.

''(E) STATE DEFINED.—In this paragraph, 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, and the Commonwealth of the Northern Mariana Islands.

''(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

''(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.''.

''(c) CLERICAL AMENDMENT.—The table of contents Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

'Sec. 218A. Admission of Y nonimmigrants.''

SEC. 403. GENERALLY NONIMMIGRANT EMPLOYER OBLIGATIONS.

''(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A of the Immigration and Nationality Act, as added by section 402, the following:

''SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.

''(a) GENERAL REQUIREMENTS.—Each employer who seeks to employ a Y nonimmigrant shall—

''(1) file in accordance with subsection (b) an application for labor certification of the position that the employer seeks to fill with a Y nonimmigrant that contains—

''(A) the attestation described in subsection (c);

''(B) a description of the nature and location of the work to be performed;

''(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

''(D) the number of job opportunities in which the employer seeks to employ the workers;

''(2) include with the application filed under paragraph (1) a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question; and

''(3) be required to pay, with respect to an application to employ a Y–1 worker—

''(A) an application processing fee for each alien, in an amount sufficient to recover the full cost to the Secretary of Labor of administrative and other expenses associated with adjudicating the application; and

''(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(x), of—

''(i) $500, in the case of an employer employing 25 employees or less;

''(ii) $750, in the case of an employer employing between 26 and 150 employees;

''(iii) $1,000, in the case of an employer employing between 151 and 500 employees; or

''(iv) $1,250, in the case of an employer employing more than 500 employees;

''provided that an employer who provides a Y nonimmigrant health insurance coverage shall not be required to pay the impact fee.

''(b) REQUIRED PROCEDURE.—Each employer of Y nonimmigrants shall comply with the following requirements:

''(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—The employer involved shall recruit United States workers for the position for which labor certification is sought under this section, by—

''(A) Not later than 90 days before the date on which an application is filed under subsection (a)(1) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements of the job, to the designated state agency and—

''(i) authorizing the designated state agency to post the job opportunity on the Internet website established under section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

''(ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

''(B) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see for a period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;

''(C) advertising the availability of the job opportunity for which the employer is seeking a worker in one of the three highest circulation publications in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days during the period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date; and

''(D) advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker, as recommended by the designated state agency. The employer shall not be required to advertise in more than three such recommended publications.

''(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

''(3) DEFINITION.—For purposes of this subsection, 'designated state agency' shall mean the state agency designated to perform the functions in this subsection in the area of employment in the State in which the employer is located.

''(c) APPLICATION.—An application under this section for labor certification of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

''(1) with respect to an application for labor certification of a position that an employer seeks to fill with a Y–1 or Y–2B nonimmigrant—

''(A) PROTECTION OF UNITED STATES WORKERS.—The employment of a Y nonimmigrant—

''(i) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

''(ii) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180 day period beginning 90 days before the date on which the petition is filed.

''(B) WAGES.—

''(i) IN GENERAL.—The Y nonimmigrant worker will be paid not less than the greater of—

''(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

''(II) the prevailing competitive wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

''(ii) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

''(iii) PREVAILING COMPETITIVE WAGE LEVEL.—For purposes of subclause (i)(II), the prevailing competitive wage level shall be determined as follows:

''(I) If the job opportunity is covered by a collective bargaining agreement between a

union and the employer, the prevailing competitive wage shall be the wage rate set forth in the collective bargaining agreement.

''(II) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

''(III)(aa) If the job opportunity is not covered by such an agreement and it is not on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

''(bb) Such regulations shall require, among other things, that such surveys are statistically valid and recently conducted.

''(D) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the Y nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

''(E) PROVISION OF INSURANCE.—If the position for which the Y nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the Y nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

''(F) NOTICE TO EMPLOYEES.—

''(i) IN GENERAL.—The employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant is sought.

''(ii) NO BARGAINING REPRESENTATIVE.—IF THERE IS NO SUCH BARGAINING REPRESENTATIVE, THE EMPLOYER HAS—

''(I) posted a notice of the filing of the application in a conspicuous location at the place or places of employment for which the Y nonimmigrant is sought; or

''(II) electronically disseminated such a notice to the employer's employees in the occupational classification for which the Y nonimmigrant is sought.

''(G) RECRUITMENT.—That—

''(i) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the application; and

''(ii) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

''(I) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the application was filed with the Department of Labor and ending on the date that is 14 days before such filing date; and

''(II) the wages that the employer would be required by law to provide for the Y nonimmigrant were used in conducting recruitment.

''(H) INELIGIBILITY.—The employer is not currently ineligible from using the Y nonimmigrant program described in this section.

''(I) BONA FIDE OFFER OF EMPLOYMENT.—The job for which the Y nonimmigrant is sought is a bona fide job—

''(i) for which the employer needs labor or services;

''(ii) which has been and is clearly open to any United States worker; and

''(iii) for which the employer will be able to place the Y nonimmigrant on the payroll.

''(J) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each application filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

''(i) be provided to every Y nonimmigrant employed under the petition;

''(ii) be made available for public examination at the employer's place of business or work site;

''(iii) be made available to the Secretary of Labor during any audit; and

''(iv) remain available for examination for 5 years after the date on which the application is filed.

''(K) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of a Y nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with section 218A(q)(2).

''(L) Actual need for Labor or Services.—The application was filed not more than 60 days before the date on which the employer needed labor or services for which the Y nonimmigrant is sought.

''(d) AUDIT OF ATTESTATIONS.—

''(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all petitions approved under section 218A to the Secretary of Labor for potential audit.

''(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

''(e) INELIGIBLE EMPLOYERS.—

''(1) IN GENERAL.—In addition to any other applicable penalties under law, the Secretary of Labor and the Secretary of Homeland Security shall not, for the period described in paragraph (2), approve an employer's petition or application for a labor certification under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

''(A) has, with respect to the application required under subsection (a), including attestations required under subsection (b)—

''(i) misrepresented a material fact;

''(ii) made a fraudulent statement; or

''(iii) failed to comply with the terms of such attestations; or

''(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor;

''(C) has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law;

''(D) has, within three years prior to the date of application:

''(i) committed any hazardous occupation orders violation resulting in injury or death under the child labor provisions contained in section 12 of the Fair Labor Standards Act and any regulation thereunder;

''(ii) been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6 of the Fair Labor Standards Act; or

''(iii) been assessed a civil money penalty for any repeated or willful violation of the overtime provisions of section 7 of the Fair Labor Standards Act or any regulations thereunder, other than a repeated violation that is self-reported; or

''(E) has, within three years prior to the date of application, received a citation for:

''(i) a willful violation; or

''(ii) repeated serious violations involving injury or death of section 5 of the Occupational Safety and Health Act, or any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act, or any regulations prescribed pursuant to that. This subsection shall also apply to equivalent violations of a plan approved under section 18 of the Occupational Safety and Health Act.

''(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years. However, an employer who has been convicted of any of the offenses codified in Chapter 77 of Title 18 of the United States Code (slave labor) or any conspiracy to commit such offenses, or any human trafficking offense under state or territorial law shall be permanently ineligible to participate in the labor certification programs.

''(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer's application under subsection (b) if the work to be performed by the Y nonimmigrant is not agriculture based and is located in a county where the unemployment rate during the most recently completed year is more than 7 percent. An employer in a high unemployment area may petition the Secretary for a waiver of this provision. The Secretary shall promulgate regulations for the expeditious review of such waivers, which shall specify that the employer must satisfy the requirements of section (b) above and in addition must provide documentation of its recruitment efforts, including proof that it has advertised the position in one of the three publications that have the highest circulation in the labor market that is likely to be patronized by a potential worker for not fewer than 20 consecutive days under the rules and conditions set forth in section (b). An employer who has provided proof of advertising in accordance with this section shall be deemed to be in compliance with the requirements of subsection (b)(1)(D) of this section. The Secretary shall provide for a process to promptly respond to all waiver requests, and shall maintain on the Department of Labor's website an annual list of counties to which this subsection applies.

''(4) INELIGIBILITY FOR PETITIONS.—The Secretary of Labor shall inform the Secretary of Homeland Security of a determination under paragraph (1) with respect to a specific employer. The Secretary of Homeland Security shall not, for the period described in paragraph (2), approve the petitions or applications of any such employer for any immigrant or nonimmigrant program, regardless of whether such application or petition requires a labor certification.

''(f) PROHIBITION OF INDEPENDENT CONTRACTORS.—

''(1) COVERAGE.—Notwithstanding any other provision of law—

''(A) a Y nonimmigrant is prohibited from being treated as an independent contractor under any federal or state law;

''(B) no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor contractor, may treat a Y nonimmigrant as an independent contractor; and

''(C) this provision shall not be construed to prevent employers who operate as independent contractors from employing Y nonimmigrants as employees.

''(2) APPLICABILITY OF LAWS.—A Y nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

''(3) TAX RESPONSIBILITIES—With respect to each employed Y nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

''(g) WHISTLEBLOWER PROTECTION.—

''(1) PROHIBITED ACTIVITIES.—It shall be unlawful for an employer or a labor contractor of a Y nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

''(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act or [title of bill]; or

''(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act or [title of bill].

''(2) RULEMAKING.—The Secretary of Labor shall promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(Y) or 101(a)(15)(H) who files a nonfrivolous complaint (as defined by the Federal Rules of Civil Procedure) regarding a violation of this Act, [title of bill] or any other Federal labor or employment law, or any other rule or regulation pertaining to such laws and is otherwise eligible to remain and work in the United States prior to the expiration of the maximum period of stay authorized for that nonimmigrant classification for a period of 120 consecutive days or such additional time period as the Secretary shall determine through rulemaking is necessary to collect information or take evidence from the nonimmigrant alien regarding a complaint or agency investigation. This period shall be allowed to exceed the maximum period of stay authorized for that nonimmigrant classification if the Secretary of Labor has designated the nonimmigrant alien as a necessary witness.

''(h) LABOR RECRUITERS.—With respect to the employment of Y nonimmigrant workers—

''(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose, to each such worker who is recruited for employment at the time of the worker's recruitment—

''(A) the place of employment;

''(B) the compensation for the employment;

''(C) a description of employment activities;

''(D) the period of employment;

''(E) any other employee benefit to be provided and any costs to be charged for each benefit;

''(F) any travel or transportation expenses to be assessed;

''(G) the existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment;

''(H) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

''(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

''(i) work related injuries and death during the period of employment;

''(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

''(iii) the name and the telephone number of each person who must be notified of an injury or death; and

''(iv) the time period within which such notice must be given;

''(J) any education or training to be provided or required, including—

''(i) the nature and cost of such training;

''(ii) the entity that will pay such costs; and

''(iii) whether the training is a condition of employment, continued employment, or future employment; and

''(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act and of the Trafficking Victims Protection Act of 2000, P.L. 106–486, for workers recruited abroad.

''(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

''(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary and reasonable, which may be used in providing workers with information required under this section.

''(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

''(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement related to the requirements of this section made by that contractor or employer regarding employment under this program.

''(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation, such transportation costs shall be reasonable.

''(7) OTHER WORKER PROTECTIONS.—

''(A) NOTIFICATION.—Not less frequently than once every year, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for, or on behalf of, the employer.

''(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

''(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

''(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

''(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

''(II) an expeditious means to update registrations and renew certificates; and

''(III) any other requirements that the Secretary may prescribe.

''(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

''(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

''(I) the application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate;

''(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

''(aa) is a person who has been refused issuance or renewal of a certificate;

''(bb) has had a certificate suspended or revoked; or

''(cc) does not qualify for a certificate under this paragraph; or

''(III) the applicant for or holder of the certification has failed to comply with this Act.

''(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor who is an agent of an employer violates any provision of this subsection when acting within the scope of its agency, the employer shall be subject to remedies under subsections (j) and (k). An employer shall not be subject to remedies for violations committed by a foreign labor contractor when such contractor is acting in direct contravention of an express, written contractual provision contained in the agreement between the employer and the foreign labor contractor. An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under subsections (j) and (k).

''(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor if the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

''(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

''(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

''(i) WAIVER OF RIGHTS PROHIBITED.—A Y nonimmigrant may not be required to waive any rights or protections under this Act. Nothing under this subsection shall be construed to affect the interpretation of other laws.

''(j) ENFORCEMENT.—With respect to violations of the provisions of this section relating to the employment of Y nonimmigrant workers—

''(1) IN GENERAL.—The Secretary of Labor shall promulgate regulations for the receipt,

investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

''(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

''(3) REASONABLE BASIS.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

''(4) NOTICE AND HEARING.—

''(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

''(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved person or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved person or organization of such determination and the aggrieved person or organization may seek a hearing on the complaint under procedures established by the Secretary which comply with the requirements of section 556.

''(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

''(5) ATTORNEY'S FEES.—A complainant who prevails in an action under this section with respect to a claim related to wages or compensation for employment, or a claim for a violation of subsection (j), shall be entitled to an award of reasonable attorney's fees and costs.

''(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

''(A) to seek remedial action, including injunctive relief;

''(B) to recover the damages described in subsection (k); or

''(C) to ensure compliance with terms and conditions described in subsection (g).

''(7) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

''(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

''(k) PENALTIES.—With respect to violations of the provisions of this section relating to the employment of Y–1 or Y–2B nonimmigrants—

''(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of this section, the Secretary may impose administrative remedies and penalties, including—

''(A) back wages;

''(B) benefits; and

''(C) civil monetary penalties.

''(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

''(A) for a violation of subsections (b) through (g)—

''(i) a fine in an amount not more than $2,000 per violation per affected worker and $4,000 per violation per affected worker for each subsequent violation;

''(ii) if the violation was willful, a fine in an amount not more than $5,000 per violation per affected worker;

''(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than $25,000 per violation per affected worker; and

''(B) for a violation of subsection (h)—

''(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

''(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

''(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

''(C) for knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters)—

''(1) a fine in an amount not more than $4,000 per affected worker; and

''(2) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed $5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.

''(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

''(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than $35,000, or both.

''(l) DEFINITIONS.—Unless otherwise provided, in this section and section 218A:

''(1) AGGRIEVED PERSON.—The term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

''(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

''(B) a representative authorized by a worker whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

''(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the Y worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

''(3) CONVENTION AGAINST TORTURE.—The term 'Convention Against Torture' shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277, 112 Stat. 2681, 2681–821).

''(4) DERIVATIVE Y NONIMMIGRANT.—The term 'derivative' Y nonimmigrant means an alien described at paragraph (Y)(iii) of subsection 101(a)(15).

''(5) ELIGIBLE; ELIGIBLE INDIVIDUAL.—The term 'eligible', when used with respect to an individual, or 'eligible individual', means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

''(6) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(7) FELONY.—The term 'felony', with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of one year or longer in prison may be imposed.

''(8) FORCE MAJEURE EVENT.—The term 'force majeure event' shall mean an event that is beyond the control of either party, including, without limitation, hurricanes, earthquakes, act of terrorism, war, fire, civil disorder or other events of a similar or different kind.

''(9) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

''(10) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

''(11) FULL TIME.—The term 'full time', with respect to a job in agricultural labor or services, means any job in which the individual is employed 5.75 or more hours per day; and for any job, means in any period of authorized admission or portion of such period, employment or study for at least 90 percent of the total number of work-hours in such period, calculated at a rate of 1,575 work-hours per year (1,438 work-hours per year for agricultural employment). Each credit-hour of study shall be counted as the equivalent of 50 work-hours.

''(12) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(14) MISDEMEANOR.—The term 'misdemeanor', with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of no more than 364 days in prison may be imposed.

''(15) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218B by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

''(16) SEASONAL.—Labor is performed on a 'seasonal' basis if—

''(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

''(B) from its nature, it may not be continuous or carried on throughout the year.

''(17) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

''(18) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means

the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

''(19) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

''(A) a citizen or national of the United States; or

''(B) an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) admitted as a refugee under section 207;

''(iii) granted asylum under section 208; or

''(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.'.

''(20) Y NONIMMIGRANT; Y NONIMMIGRANT WORKER.—

''(A) The term 'Y nonimmigrant' means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15), or the spouse or child of such nonimmigrant in derivative status under (Y)(iii); and

''(B) The term 'Y nonimmigrant worker' means an alien admitted to the United States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15).

''(21) Y–1 NONIMMIGRANT; Y–1 WORKER.—The term 'Y–1 nonimmigrant' or 'Y–1 worker' means an alien admitted to the United States under paragraph (i) of subsection 101(a)(15)(Y).

''(23) Y–2B NONIMMIGRANT; Y–2B WORKER.—The term 'Y–2B nonimmigrant' or 'Y–2B worker' means an alien admitted to the United States under paragraph (ii) of subsection 101(a)(15)(Y).

''(24) Y–3 NONIMMIGRANT.—The term 'Y–3 nonimmigrant' means an alien admitted to the United States under paragraph (iii) of subsection 101(a)(15)(Y).''.

''(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

''Sec. 218B. Employer obligations.''.

Subtitle B—Seasonal Agricultural Nonimmigrant Temporary Workers

SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended inserting the following after section 218B:

''SEC. 218C. H–2A EMPLOYER APPLICATIONS.

''(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

''(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

''(A) the assurances described in subsection (b);

''(B) a description of the nature and location of the work to be performed;

''(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

''(D) the number of job opportunities in which the employer seeks to employ the workers.

''(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

''(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

''(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

''(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

''(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

''(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

''(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

''(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

''(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

''(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

''(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer has applied for an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

''(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

''(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218E to all workers employed in the job opportunities for which the employer has applied for an H–2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

''(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

''(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

''(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

''(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

''(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

''(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

''(H) EMPLOYMENT OF UNITED STATES WORKERS.—

''(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State workforce agency which serves the area of intended employment and authorize the posting of the job opportunity on its electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

''(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

''(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide

a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

''(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

''(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H–2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

''(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

''(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

''(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

''(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

''(v) UNITED STATES WORKER.—For purpose of this subparagraph, the term 'United States worker' means an alien described in section 218G(14) except an alien admitted or otherwise provided status under section 101(a)(15)(Z).

''(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

''(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218E, 218F, and 218G.

''(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

''(d) WITHDRAWAL OF APPLICATIONS.—

''(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

''(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

''(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

''(e) REVIEW AND APPROVAL OF APPLICATIONS.—

''(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

''(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

''(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

''(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.

''SEC. 218D. H–2A EMPLOYMENT REQUIREMENTS.

''(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

''(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218C(b)(2) shall include each of the following benefit, wage, and working condition provisions:

''(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

''(A) IN GENERAL.—An employer applying under section 218C(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

''(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) CHARGES FOR HOUSING.—

''(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

''(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

''(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

''(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor

that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(iii) AMOUNT OF ALLOWANCE.—

''(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(2) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

''(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

''(C) LIMITATION.—

''(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

''(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

''(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

''(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

''(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

''(3) REQUIRED WAGES.—

''(A) IN GENERAL.—An employer applying for workers under section 218C(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

''(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

''(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

''(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

''(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

''(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

''(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

''(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

''(i) the worker's total earnings for the pay period;

''(ii) the worker's hourly rate of pay, piece rate of pay, or both;

''(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the 3/4 guarantee described in paragraph (4);

''(iv) the hours actually worked by the worker;

''(v) an itemization of the deductions made from the worker's wages; and

''(vi) if piece rates of pay are used, the units produced daily.

''(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

''(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

''(v) recommendations for future wage protection under this section.

''(H) COMMISSION ON WAGE STANDARDS.—

''(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

''(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

''(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

''(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

''(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

''(I) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

''(V) recommendations for future wage protection under this section.

''(iv) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

''(v) INTERIM REPORT.—The Commission shall issue an interim report, published in the Federal Register, with opportunity and comment, for a period of at least 90 days.

''(vi) FINAL REPORT.—After considering recommendations from interested persons (including an opportunity for comment from the public and affected States), the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii) not later than December 31, 2009.

''(vii) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

''(4) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

''(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

''(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the '3/4 guarantee' described in subparagraph (A).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

''(5) MOTOR VEHICLE SAFETY.—

''(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

''(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any globally H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

''(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

''(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

''(II) does not apply to—

''(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifically requested or arranged such transportation; or

''(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

''(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

''(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

''(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

''(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

''(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

''(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

''(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

''(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

''(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

''(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

''(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

''(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

''(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

''(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218C(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218C, or section 218E shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

''(f) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2A nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

''(1) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and other biometric identifiers that can be authenticated;

''(2) shall, during the alien's authorized period of admission as an H–2A nonimmigrant, serve as a valid entry document for the purpose of applying for admission to the United States—

''(A) instead of a passport and visa if the alien—

''(i) is a national of a foreign territory contiguous to the United States; and

''(ii) is applying for admission at a land border port of entry; or

''(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

''(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

''(4) shall be issued to the H–2A nonimmigrant by the Secretary promptly after such alien's admission to the United States as an H–2A nonimmigrant and reporting to the employer's worksite under or, at the discretion of the Secretary, may be issued by the Secretary of State at a consulate instead of a visa.

''SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.

''(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218C(e)(2)(B) covering the petitioner.

''(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved

petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

''(c) CRITERIA FOR ADMISSIBILITY—

''(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218C, and section 218D, and the alien is not ineligible under paragraph (2).

''(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

''(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

''(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

''(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE—

''(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

''(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

''(d) PERIOD OF ADMISSION.—

''(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218C(e)(2)(B), not to exceed 10 months except as specified in paragraph (2), supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

''(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

''(B) the total period of employment, including such 14-day period, may not exceed 10 months.

''(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

''(e) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

''(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(f) REPLACEMENT OF ALIEN.—

''(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

''(A) who abandons or prematurely terminates employment; or

''(B) whose employment is terminated after a United States worker is employed pursuant to section 218C(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

''(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

''(g) IDENTIFICATION DOCUMENT.—

''(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien's identity.

''(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

''(A) The document shall be capable of reliably determining whether—

''(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

''(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

''(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

''(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

''(C) The document shall—

''(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

''(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien's stay to a date that is more than 10 months after the date of the alien's last admission to the United States under this section.

''(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

''(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

''(4) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

''(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions), other than a worker admitted pursuant to subsection (d)(2), is 10 months.

''(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions).

''(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

''(i) SPECIAL RULES FOR ALIENS EMPLOYED AS DAIRY WORKERS.—Notwithstanding any provision of this Act, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a dairy worker—

''(1) may be admitted for a period of up to 3 years;

''(2) may not be extended beyond 3 years; and

''(3) shall not be subject to the requirements of subsection (h)(4).

''SEC. 218F. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

''(a) ENFORCEMENT AUTHORITY.—

''(1) INVESTIGATION OF COMPLAINTS.—

''(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218C(b), or an employer's misrepresentation of material facts in an application under section 218C(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this

subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

''(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

''(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218C(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218C(b), or a material misrepresentation of fact in an application under section 218C(a)—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

''(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218C(b), a willful misrepresentation of a material fact in an application under section 218C(a), or a violation of subsection (d)(1)—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

''(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

''(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

''(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218C(b) or a willful misrepresentation of a material fact in an application under section 218C(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218C(a) or during the period of 30 days preceding such period of employment—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

''(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218C(a) in excess of $90,000.

''(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218D(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218D(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

''(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218C or 218D.

''(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

''(1) The providing of housing or a housing allowance as required under section 218D(b)(1).

''(2) The reimbursement of transportation as required under section 218D(b)(2).

''(3) The payment of wages required under section 218D(b)(3) when due.

''(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218C(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218D(c), compliance with which shall be governed by the provisions of such laws.

''(5) The guarantee of employment required under section 218D(b)(4).

''(6) The motor vehicle safety requirements under section 218D(b)(5).

''(7) The prohibition of discrimination under subsection (d)(2).

''(c) PRIVATE RIGHT OF ACTION—

''(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

''(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers and agricultural employers without charge to the parties.

''(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

''(C) AUTHORIZATION.—

''(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

''(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

''(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

''(3) ELECTION.—An H–2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

''(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

''(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

''(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

''(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

''(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

''(C) In determining the amount of damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

''(7) WORKERS' COMPENSATION BENEFITS.—

''(A) EXCLUSIVE REMEDY.—Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

''(B) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not

include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

''(i) a recovery under a State workers' compensation law; or

''(ii) rights conferred under a State workers' compensation law.

''(C) CONSIDERATIONS.—In determining the amount of damages to be awarded under subparagraph (A), a court may consider whether an attempt was made to resolve the issues in dispute prior to resorting to litigation.

''(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

''(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(d) DISCRIMINATION PROHIBITED.—

''(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218C or 218D or any rule or regulation pertaining to section 218C or 218D, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218C or 218D or any rule or regulation pertaining to either of such sections.

''(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218C(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

''(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(f) ROLE OF ASSOCIATIONS.—

''(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218C and 218D, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

''(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

''SEC. 218G. DEFINITIONS.

''For purposes of this section and section 218C, 218D, 218E, and 218F:

''(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

''(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

''(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States worker from a job for which the H–2A worker or workers is or are sought.

''(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

''(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

''(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

''(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

''(9) LAYING OFF.—

''(A) IN GENERAL.—The term 'laying off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218D(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218C(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218C by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

''(11) SEASONAL.—

''(A) IN GENERAL.—The term 'seasonal', with respect to the performance of labor, means that the labor—

''(i) ordinarily pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

''(ii) because of the nature of the labor, cannot be continuous or carried on throughout the year.

''(B) EXCEPTION.—Labor performed on a dairy farm shall be considered to be seasonal labor.

''(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

''(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

''(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).''.

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

''Sec. 218C. H–2A employer applications.
''Sec. 218D. H–2A employment requirements.
''Sec. 218E. Procedure for admission and extension of stay of H–2A workers.
''Sec. 218F. Worker protections and labor standards enforcement.
''Sec. 218G. Definitions.''.

(c) CONFORMING AMENDMENT.—Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by inserting 'or work on a dairy farm,' after 'seasonal nature,'.

SEC. 405. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 404(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(b) DETERMINATION OF SCHEDULE—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218C of the Immigration and Nationality Act, as amended by section 404 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ aliens pursuant to the amendment made by section 404(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 404(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218C and 218E of the Immigration and Nationality Act, as amended and added, respectively, by section 404 of this Act, and the provisions of this Act.

SEC. 406. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218C, 218D, 218E, 218F, and 218G of the Immigration and Nationality Act, as amended or added by section 404 of this Act, shall take effect on the effective date of section 404 and shall be issued not later than 1 year after the date of enactment of this Act, or the date such regulations are promulgated, whichever is sooner.

SEC. 407. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection 218E(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218E(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 623;

(5) the number of such aliens whose status was adjusted under section 623;

(6) the number of aliens who applied for permanent residence pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by 623(b); and

(7) the number of such aliens who were approved for permanent residence pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by 623(b).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

SEC. 408. EFFECTIVE DATE.

Except as otherwise provided, sections 404 and 405 shall take effect 1 year after the date of the enactment of this Act, or the date such regulations are promulgated, whichever is sooner.

SEC. 409. NUMERICAL LIMITATIONS.

Section 214(g) of the Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)'';

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

''(B) under section 101(a)(15)(Y)(i), may not exceed 200,000 for each fiscal year; or

''(C) under section 101(a)(15)(Y)(iii), may not exceed twenty percent of the annual limit on admissions of aliens under section 101(a)(15)(Y)(i) for that fiscal year; or

''(D) under section 101(a)(15)(Y)(ii)(II), may not exceed—

''(i) 100,000 for the first fiscal year in which the program is implemented;

''(ii) in any subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

''(iii) 200,000 for any fiscal year.''; and

(2) by renumbering paragraph (2) as paragraph (3), and renumbering all subsequent paragraphs accordingly, and inserting the following as paragraph (2):

''(2) MARKET-BASED ADJUSTMENT.—With respect to the numerical limitation set in subparagraph (A)(ii) or (D)(ii) of paragraph (1)—

''(A) if the total number of visas allocated for that fiscal year are allotted within the first half of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

''(B) if the total number of visas allocated for that fiscal year are allotted within the second half of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

''(C) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.''.

(3) in paragraph (9)(A) by striking ''an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007.'' and inserting ''an alien who has been present in the United States as an H–2B nonimmigrant during any 1 of 3 fiscal years immediately preceding the fiscal year of the approved start date of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) shall not be counted toward such limitation for the fiscal year in which the petition is approved. Such alien shall be considered a returning worker.''

SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.

(a) IN GENERAL.—The Secretary of State, in cooperation with the Secretary and the Attorney General, may, as a condition of authorizing the grant of nonimmigrant visas for Y nonimmigrants who are citizens or nationals of any foreign country, negotiate with each such country to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) REQUIREMENTS OF BILATERAL AGREEMENTS.—It is the sense of Congress that each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and (B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems;

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien's home country for returning workers; and

(6) agree to such other terms as the Secretary of State considers appropriate and necessary.

SEC. 411. COMPLIANCE INVESTIGATORS.

(a) The Secretary of Labor, subject to the availability of appropriations for such purpose, shall increase, by not less than 200 per year for each of the five fiscal years after the date of enactment of [name of bill], the number of positions for compliance investigators and attorneys dedicated to the enforcement of labor standards, including those contained in sections 218A, 218B, and 218C, the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in geographic and occupational areas in which a high percentage of workers are Y nonimmigrants.

SEC. 412. STANDING COMMISSION ON IMMIGRATION AND LABOR MARKETS.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent Federal agency within the Executive Branch to be known as the Standing

Commission on Immigration and Labor Markets (referred to in this section as the ''Commission'').

(2) PURPOSES.—The purposes of the Commission are—

(A) to study nonimmigrant programs and the numerical limits imposed by law on admission of nonimmigrants;

(B) to study the numerical limits imposed by law on immigrant visas;

(C) to study the allocation of immigrant visas through the merit-based system;

(D) to make recommendations to the President and Congress with respect to such programs.

(3) MEMBERSHIP.—The Commission shall be composed of—

(A) 6 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Y Nonimmigrant Worker Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and (vi) not more than 3 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and (vii) the Secretary of Agriculture.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet at least once per quarter upon the call of the Chair or a majority of its members.

(C) QUORUM.—Four voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall—

(1) examine and analyze—

(A) the development and implementation of the programs;

(B) the criteria for the admission of nonimmigrant workers;

(C) the formula for determining the annual numerical limitations of nonimmigrant workers;

(D) the impact of nonimmigrant workers on immigration;

(E) the impact of nonimmigrant workers on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(F) the numerical limits imposed by law on immigrant visas and its effect on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(G) the allocation of immigrant visas through the evaluation system established by title V of this Act; and (H) any other matters regarding the programs that the Commission considers appropriate;

(2) not later than 18 months after the date of enactment, and every year thereafter, submit a report to the President and Congress that—

(A) contains the findings of the analysis conducted under paragraph (1);

(B) makes recommendations regarding the necessary adjustments to the programs studied to meet the labor market needs of the United States; and

(C) makes other recommendations regarding the programs, including legislative or administrative action, that the Commission determines to be in the national interest.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.— head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

(d) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of such title.

(ii) COMMISSION MEMBERS.— Clause (i) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title 5.

(e) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) FUNDING.—Fees and fines deposited into the Temporary Worker Program Account under section 286(w) of the Immigration and Nationality Act, as added by section 402 of [name of the Act], may be used by the Commission to carry out its duties under this section.

SEC. 412. AGENCY REPRESENTATION AND COORDINATION.

Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(B) in subparagraph (B), by striking ', and' and inserting a semicolon;

(C) in subparagraph (C), by striking 'paragraph (2).' and inserting 'paragraph (1); and'; and

(D) by inserting after subparagraph (C) the following:

''(D) United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law, provides health care services, or any other services intended to protect life and safety.''.

SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—CONGRESS MAKES THE FOLLOWING FINDINGS:

(1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

(2) Mexico comprises a prime source of migration to the United States.

(3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

(4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available to Mexican citizens.

(5) Many Mexican assets are held extra†legally and cannot be readily used as collateral for loans.

(6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

(7) These factors constitute a major impediment to broad†based economic growth in Mexico.

(8) Approximately 20 percent of Mexico's population works in agriculture, with the majority of this population working on small farms and few on large commercial enterprises.

(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.

(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 23, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.

(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico should accelerate the implementation of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

(2) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

(3) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—

(A) provide long term credit to borrowers;

(B) develop a viable network of regional and local intermediary lending institutions; and

(C) extend financing for alternative rural economic activities beyond direct agricultural production;

(4) expanding efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico;

(5) encouraging Mexican corporations to adopt internationally recognized corporate governance practices, including anti-corruption and transparency principles;

(6) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

(7) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's formal implementation monitoring mechanism;

(8) helping the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

(9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

(c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

(1) increasing health care access for poor and under served populations in Mexico;

(2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with emphasis on expanding prenatal care in the United States-Mexico border region;

(3) facilitating the return of stable, incapacitated workers temporarily employed in the United States to Mexico in order to receive extended, long-term care in their home country; and

(4) helping the Government of Mexico to establish a program with the private sector to cover the health care needs of Mexican nationals temporarily employed in the United States.

SEC. 414. WILLING WORKER-WILLING EMPLOYER ELECTRONIC DATABASE.

(a) ELECTRONIC JOB REGISTRY LINK.—

(1) The Secretary of Labor shall establish a publicly accessible Web page on the internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(2) The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records by the employer for the purpose of audit or investigations.

(3) The Secretary of Labor shall ensure that job opportunities advertised on a State workforce agency statewide electronic job registry established under this section are accessible—

(A) by the State workforce agencies, which may further disseminate job opportunity information to interested parties; and

(B) through the internet, for access by workers, employers, labor organizations and other interested parties.

(4) The Secretary of Labor may work with private companies and nonprofit organizations in the development and operation of the job registry link and system under paragraph (1).

(b) ELECTRONIC REGISTRY OF CERTIFIED APPLICATIONS.—

(1) The Secretary of Labor shall compile, on a current basis, a registry (by employer and by occupational classification) of the approved labor certification applications filed under this program. Such registry shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such registry publicly available through an Internet website.

(2) The Secretary of Labor may consult with the Secretary of Homeland Security, and others as appropriate, in the establishment of the registry described in paragraph (1) to ensure its compatibility with any system designed to track Y nonimmigrant employment that is operated and maintained by the Secretary of Homeland Security.

(3) The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this subsection are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien Y nonimmigrant status.

SEC. 416. CONTRACTING.

Nothing in this section shall be construed to limit the authority of the Secretary of Homeland Security or Secretary of Labor to contract with or license United States entities, as provided for in regulation, to implement any provision of this title, either entirely or in part, to the extent that each Secretary in his discretion determines that such implementation is feasible, cost-effective, secure, and in the interest of the United States. However, nothing in this provision shall be construed to alter or amend any of the requirements of OMB Circular A–76 or any other current law governing federal contracting. Any inherently governmental work already performed by employees of the Department of Homeland Security or the Department of Labor, or any inherently governmental work generated by the requirements of this legislation, shall continue to be performed by Federal employees, and any current commercial work, or new commercial work generated by the requirements of this legislation, that is subject to public-private competition under OMB Circular A–76 or any other relevant law shall continue to be subject to public-private competition.

SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.

(a) The Secretaries of Labor and Homeland Security shall each issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. Each such interim final rule shall become effective immediately upon publication in the Federal Register. Each such interim final rule shall sunset two years after issuance unless the relevant Secretary issues a final rule within two years of the issuance of the interim final rule.

(b) The exemption provided under subsection (a) shall sunset no later than two years after the date of enactment of this title, provided that, such sunset shall not be construed to impose any requirements on, or affect the validity of, any rule issued or other action taken by either Secretary under such exemption.

Subtitle C—Nonimmigrant Visa Reform

SEC. 418. STUDENT VISAS.

(a) IN GENERAL.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

(1) in clause (i)—

(A) by striking ''who is'' and inserting, ''who is—

''(I)'';

(B) by striking ''consistent with section 214(l)'' and inserting ''consistent with section 214(m)'';

(C) by striking the comma at the end and inserting the following: ''; or

''(II) engaged in temporary employment for optional practical training for an aggregate period of not more than 24 months and related to such alien's major area of study, where such alien has been lawfully enrolled on a full time basis as a nonimmigrant under clause (i) or (iv) at a college, university, conservatory, or seminary described in subclause (i)(I) for one full academic year and such employment occurs:

''(aa) during the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;

''(bb) while school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or

''(cc) within a 26-month period after completion of all course requirements for the degree (excluding thesis or equivalent);''; and

(D) by striking ''Attorney General'' the two times that phrase appears and inserting ''Secretary of Homeland Security''.

(2) in clause (ii)—

(A) by inserting ''or (iv)'' after ''clause (i)''; and (B) by striking '', and'' and inserting a semicolon; and (3) by adding at the end the following: ''(iv) an alien described in clause (i), except that the alien is not required to have a residence in a foreign country that the alien has no intention of abandoning, who has been accepted at and plans to attend an accredited graduate program in mathematics, engineering, information technology, or the natural sciences in the United States for the purpose of obtaining an advanced degree; and ''(v) an alien who maintains actual residence and place of abode in the alien's country of nationality, who is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is temporarily visiting the United States for a period not to exceed 30 days;''.

(b) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—An alien admitted as a nonimmigrant student described in section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in an off†campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States workers to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, may be disqualified for a period of no more than 5 years from employing an alien student under paragraph (1).

(3) SOCIAL SECURITY.—Any employment engaged in by a student pursuant to paragraph (1) of this subsection shall, for purposes of section 210 of the Social Security Act (42 U.S.C. 410) and section 3121 of the Internal Revenue Code (26 U.S.C. 3121), not be considered to be for a purpose related to section 101(a)(15)(F) of the Immigration and Nationality Act.

(c) CLARIFYING THE IMMIGRANT INTENT PROVISION.—Subsection (b) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended—

(1) by striking the parenthetical phrase ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)'' in the first sentence; and

(2) by striking ''under section 101(a)(15)'' and inserting in its place ''under the immigration laws.''.

(d) GRANTING DUAL INTENT TO CERTAIN NONIMMIGRANT STUDENTS.—Subsection (h) of section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended—

(1) by inserting ''(F)(iv),'' following ''(H)(i)(b) or (c),''; and

(2) by striking ''if the alien had obtained a change of status'' and inserting in its place ''if the alien had been admitted as, provided status as, or obtained a change of status''.

SEC. 419. H–1B STREAMLINING AND SIMPLIFICATION.

(a) H–1B AMENDMENTS.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1) by deleting clauses (i) through (vii) of subparagraph (A) and inserting in their place—

''(i) 115,000 in fiscal year 2008;

''(ii) in any subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

''(iii) 180,000 for any fiscal year; or''.

(2) in paragraph (9), as renumbered by Section 405—

(A) by striking ''The annual numeric limitations described in clause (i) shall not exceed'' from subclause (ii) of subparagraph (B) and inserting the following: ''Without respect to the annual numeric limitation described in clause (i), the Secretary may issue a visa or otherwise grant nonimmigrant status pursuant to section 1101(a)(15)(H)(i)(b) in the following quantities:'';

(B) by striking subparagraph (B)(iv); and

(C) by striking subparagraph (D).

(b) REQUIRING A DEGREE.—Paragraph (2) of section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—

(1) by deleting the comma at the end of subparagraph (A) and inserting in its place ''; and''; and

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

''(B) attainment of a bachelor's or higher degree in the specific specialty from an educational institution in the United States accredited by a nationally recognized accrediting agency or association (or an equivalent degree from a foreign educational institution that is equivalent to such an institution) as a minimum for entry into the occupation in the United States.''.

(c) PROVISION OF W–2 FORMS.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)), as renumbered by Section 405, is amended to read as follows:

''(5) In the case of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title—

''(A) The period of authorized admission as such a nonimmigrant may not exceed six years; [Provided that, this provision shall not apply to such a nonimmigrant who has filed a petition for an immigrant visa under section 203(b)(1), if 365 days or more have elapsed since filing and it has not been denied, in which case the Secretary of Homeland Security may extend the stay of an alien in one-year increments until such time as a final decision is made on the alien's lawful permanent residence].

''(B) If the alien is granted an initial period of admission less than six years, any subsequent application for an extension of stay for such alien must include the Form W–2 Wage and Tax Statement filed by the employer for such employee, and such other form or information relating to such employment as the Secretary of Homeland Security may in his discretion specify, with respect to such nonimmigrant alien employee for the period of admission granted to the alien.

''(C) Notwithstanding section 6103 of title 26, United States Code, or any other law, the Commissioner of Internal Revenue or the Commissioner of the Social Security Administration shall upon request of the Secretary confirm whether the Form W–2 Wage and Tax Statement filed by the employer under clause (i) matches a Form W–2 Wage and Tax Statement filed with the Internal Revenue Service or the Social Security Administration, as the case may be.''

(d) EXTENSION OF H–1B STATUS FOR MERIT-BASED ADJUSTMENT APPLICANTS.—

(1) Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) is amended by inserting before the period: ''; Provided that, this provision shall not apply to such a nonimmigrant who has filed a petition for an immigrant visa accompanied by a qualifying employer recommendation under section 203(b)(1), if 365 days or more have elapsed since filing and it has not been denied, in which case the Secretary of Homeland Security may extend the stay of an alien in one-year increments until such time as a final decision is made on the alien's lawful permanent residence.''

(2) Sections 106(a) and 106(b) of the American Competitiveness in the Twenty-First Century Act of 2000—Immigration Services and Infrastructure Improvements Act of 2000, Public Law 106–313, are hereby repealed.

SEC. 420. H–1B EMPLOYER REQUIREMENTS.

(a) APPLICATION OF NONDISPLACEMENT AND GOOD FAITH RECRUITMENT REQUIREMENTS TO ALL H–1B Employers.—

(1)AMENDMENTS.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E);

(I) in clause (i), by striking ''(E)(i) In the case of an application described in clause (ii), the'' and inserting ''(E) The''; and

(II) by striking clause (ii);

(ii) in subparagraph (F), by striking ''In the case of'' and all that follows through ''where—''and inserting the following: ''The employer will not place the nonimmigrant with another employer if—''; and

(iii) in subparagraph (G), by striking ''In the case of an application described in subparagraph (E)(ii), subject'' and inserting ''Subject'';

(B) in paragraph (2)—

(i) in subparagraph (E), by striking ''If an H–1B-dependent employer'' and inserting ''If an employer that employs H–1B nonimmigrants''; and

(ii) in subparagraph (F), by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''; and

(C) by striking paragraph (3).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to applications filed on or after the date of the enactment of this Act.

(b) NONDISPLACEMENT REQUIREMENT.—

(1) EXTENDING TIME PERIOD FOR NONDISPLACEMENT.—Section 212(n) of such Act, as amended by subsection (a), is further amended—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking ''90 days'' each place it appears and inserting ''180 days'';

(ii) in subparagraph (F)(ii), by striking ''90 days'' each place it appears and inserting ''180 days''; and

(B) in paragraph (2)(C)(iii), by striking ''90 days'' each place it appears and inserting ''180 days'.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall apply to applications filed on or after the date of the enactment of this Act; and

(B) shall not apply to displacements for periods occurring more than 90 days before such date.

(c) H–1B NONIMMIGRANTS NOT ADMITTED FOR JOBS ADVERTISED OR OFFERED ONLY TO H–1B NONIMMIGRANTS.—Section 212(n)(1) of such Act, as amended by this section, is further amended—

(1) by inserting after subparagraph (G) the following:

''(H)(i) The employer has not advertised the available jobs specified in the application in an advertisement that states or indicates that—

''(I) the job or jobs are only available to persons who are or who may become H–1B nonimmigrants; or

''(II) persons who are or who may become H–1B nonimmigrants shall receive priority or a preference in the hiring process.

''(ii) The employer has not only recruited persons who are, or who may become, H–1B nonimmigrants to fill the job or jobs.''; and

(2) in the undesignated paragraph at the end, by striking ''The employer'' and inserting the following:

''(K) The employer''.

(d) LIMIT ON PERCENTAGE OF H–1B EMPLOYEES.—Section 212(n)(1) of such Act, as amended by this section, is further amended by inserting after subparagraph (H), as added by subsection (d)(1), the following:

''(I) If the employer employs not less than 50 employees in the United States, not more than 50 percent of such employees are H–1B nonimmigrants.''.

SEC. 421. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) SAFEGUARDS AGAINST FRAUD AND MISREPRESENTATION IN APPLICATION REVIEW PROCESS.—Section 212(n)(1)(K) of the Immigration and Nationality Act, as redesignated by section 2(d)(2), is amended—

(1) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(2) by inserting '', clear indicators of fraud, misrepresentation of material fact,'' after ''completeness'';

(3) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(4) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(5) by adding at the end the following: ''If the Secretary's review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing under paragraph (2).''

(b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—Section 212(n)(2) of such Act is amended—

(1) in subparagraph (A)—

(A) by striking ''12 months'' and inserting ''24 months''; and

(B) by striking ''The Secretary shall conduct'' and all that follows and inserting ''Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.'';

(2) in subparagraph (C)(i)—

(A) by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition under subparagraph (B), (C)(i), (E), (F), (H), (I), or (J) of paragraph (1)''; and

(B) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)'';

(3) in subparagraph (G)—

(A) in clause (i), by striking ''if the Secretary'' and all that follows and inserting ''with regard to the employer's compliance with the requirements of this subsection.'';

(B) in clause (ii), by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.'';

(C) in clause (iii), by striking the last sentence;

(D) by striking clauses (iv) and (v);

(E) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(F) in clause (iv), as redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(G) by amending clause (v), as redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.''.

(H) in clause (vi), as redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and (I) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary may impose a penalty under subparagraph (C).''; and

(4) by striking subparagraph (H).

(c) INFORMATION SHARING BETWEEN DEPARTMENT OF LABOR AND DEPARTMENT OF HOMELAND SECURITY.—Section 212(n)(2) of such Act, as amended by this section, is further amended by inserting after subparagraph (G) the following:

''(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by H-1B employers as part of the adjudication process that indicates that the employer is not complying with H-1B visa program requirements. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

(d) AUDITS.—Section 212(n)(2)(A) of such Act, as amended by this section, is further amended by adding at the end the following: ''The Secretary may conduct surveys of the degree to which employers comply with the requirements under this subsection and may conduct annual compliance audits of employers that employ H-1B nonimmigrants. The Secretary shall conduct annual compliance audits of not less than 1 percent of the employers that employ H-1B nonimmigrants during the applicable calendar year.''

(e) PENALTIES.—Section 212(n)(2)(C) of such Act, as amended by this section, is further amended—

(1) in clause (i)(I), by striking ''$1,000'' and inserting '$2,000';

(2) in clause (ii)(I), by striking ''$5,000'' and inserting '$10,000'; and

(3) in clause (vi)(III), by striking ''$1,000'' and inserting ''$2,000''.

(f) INFORMATION PROVIDED TO H-1B NONIMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of such Act, as amended by this section, is further amended by inserting after paragraph (2) the following:

''(3)(A) Upon issuing an H-1B visa to an applicant outside the United States, the issuing office shall provide the applicant with—

''(i) a brochure outlining the employer's obligations and the employee's rights under Federal law, including labor and wage protections; and

''(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer obligations and workers' rights.''.

''(B) Upon the issuance of an H-1B visa to an alien inside the United States, the officer of the Department of Homeland Security shall provide the applicant with—

''(i) a brochure outlining the employer's obligations and the employee's rights under Federal law, including labor and wage protections; and

''(ii) the contact information for Federal agencies that can offer more information or assistance in clarifying employer's obligations and workers' rights.''.

SEC. 422. L–1 VISA FRAUD AND ABUSE PROTECTIONS.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (E), by striking ''In the case of an alien spouse admitted under section 101(a)(15)(L), who'' and inserting 'Except as provided in subparagraph (H), if an alien spouse admitted under section 101(a)(15)(L)''; and

(3) by adding at the end the following:

''(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to open, or be employed in, a new facility, the petition may be approved for up to 12 months only if the employer operating the new facility has—

''(I) a business plan;

''(II) sufficient physical premises to carry out the proposed business activities; and

''(III) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

''(I) evidence that the importing employer meets the requirements of this subsection;

''(II) evidence that the beneficiary meets the requirements under section 101(a)(15)(L);

''(III) a statement summarizing the original petition;

''(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

''(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

''(VI) evidence that the importing employer, during the preceding 12 months, has been doing business at the new facility through regular, systematic, and continuous provision of goods or services, or has otherwise been taking commercially reasonable steps to establish the new facility as a commercial enterprise;

''(VII) a statement of the duties the beneficiary has performed at the new facility during the preceding 12 months and the duties the beneficiary will perform at the new facility during the extension period approved under this clause;

''(VIII) a statement describing the staffing at the new facility, including the number of employees and the types of positions held by such employees;

''(IX) evidence of wages paid to employees;

''(X) evidence of the financial status of the new facility; and

''(XI) any other evidence or data prescribed by the Secretary.

''(iii) Notwithstanding subclauses (I) through (VI) of clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security may approve a petition subsequently filed on behalf of the beneficiary to continue employment at the facility described in this subsection for a period beyond the initially granted 12-month period if the importing employer demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances beyond the control of the importing employer.

''(iv) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L), the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify a company or facility's existence in the United States and abroad.''.

(b) INVESTIGATIONS AND AUDITS BY DEPARTMENT OF HOMELAND SECURITY.—

(1) DEPARTMENT OF HOMELAND SECURITY INVESTIGATIONS.—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

''(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

''(ii) If the Secretary of Homeland Security receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may

conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5.

''(iii) The Secretary of Homeland Security shall establish a procedure for any person desiring to provide to the Secretary of Homeland Security information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Homeland Security and completed by or on behalf of the person.

''(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary of Homeland Security receives the information not later than 24 months after the date of the alleged failure.

''(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary of Homeland Security shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

''(vi) If the Secretary of Homeland Security, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

''(vii) If the Secretary of Homeland Security, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary may impose a penalty under section 214(c)(2)(J).'.

(2) AUDITS.—Section 214(c)(2)(I) of such Act, as added by paragraph (1), is amended by adding at the end the following:

''(viii) The Secretary of Homeland Security may conduct surveys of the degree to which employers comply with the requirements under this section and may conduct annual compliance audits of employers that employ H–1B nonimmigrants. The Secretary shall conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable calendar year.''.

(3) REPORTING REQUIREMENT.—Section 214(c)(8) of such Act is amended by inserting ''(L),'' after ''(H),''.

(c) PENALTIES.—Section 214(c)(2) of such Act, as amended by this section, is further amended by adding at the end the following:

''(J)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), or (K) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Homeland Security may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants.

''(ii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), or (K) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

''(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants.

''(iii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (L)(i)—

''(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate; and

''(II) the employer shall be liable to employees harmed for lost wages and benefits.''.

SEC. 423. WHISTLEBLOWER PROTECTIONS.

(a) H–1B WHISTLEBLOWER PROTECTIONS.—SECTION 212(N)(2)(C)(IV) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1182(N)(2)(C)(IV)) IS AMENDED—

(1) by inserting 'take, fail to take, or threaten to take or fail to take, a personnel action, or' before 'to intimidate'; and

(2) by adding at the end the following: 'An employer that violates this clause shall be liable to the employees harmed by such violation for lost compensation, including back pay.'.

(b) L–1 WHISTLEBLOWER PROTECTIONS.—SECTION 214(C)(2) OF SUCH ACT, AS AMENDED BY SECTION 4, IS FURTHER AMENDED BY ADDING AT THE END THE FOLLOWING:

''(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

''(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

''(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

''(ii) An employer that violates this subparagraph shall be liable to the employees harmed by such violation for lost wages and benefits.

''(iii) In this subparagraph, the term 'employee' includes—

''(I) a current employee;

''(II) a former employee; and

''(III) an applicant for employment.''.

SEC. 424. LIMITATIONS ON APPROVAL OF L–1 PETITIONS FOR START-UP COMPANIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended—

(a) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(b) in subparagraph (E), by striking ''In the case'' and inserting ''Except as provided in subparagraph (H), in the case''; and

(c) by adding at the end the following:

(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to be employed in a new office, the petition may be approved for a period not to exceed 12 months only if the alien has not been the beneficiary of two or more petitions under this subparagraph within the immediately preceding two years and only if the employer operating the new office has—

''(I) an adequate business plan;

''(II) sufficient physical premises to carry out the proposed business activities; and

''(III) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits to the Secretary of Homeland Security—

''(I) evidence that the importing employer meets the requirements of this subsection;

''(II) evidence that the beneficiary meets the requirements of section 101(a)(15)(L);

''(III) a statement summarizing the original petition;

''(IV) evidence that the importing employer has substantially complied with the business plan submitted under clause (i);

''(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition if requested by the Secretary;

''(VI) evidence that the importing employer, from the date of petition approval under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods or services;

''(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period approved under this clause;

''(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

''(IX) evidence of wages paid to employees if the beneficiary will be employed in a managerial or executive capacity;

''(X) evidence of the financial status of the new office; and

''(XI) any other evidence or data prescribed by the Secretary.

''(iii) A new office employing the beneficiary of an L–1 petition approved under this subparagraph must do business through regular, systematic, and continuous provision of goods or services for the entire period of petition approval.

''(iv) Notwithstanding clause (iii) or subclauses (I) through (VI) of clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security may in his discretion approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subsection for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods or services for the 6

months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in his discretion.

''(H)(i) The Secretary of Homeland Security may not authorize the spouse of an alien described under section 101(a)(15)(L), who is a dependent of a beneficiary under subparagraph (G), to engage in employment in the United States during the initial 12-month period described in subparagraph (G)(i).

''(A spouse described in clause (i) may be provided employment authorization upon the approval of an extension under subparagraph (G)(ii).

''(I) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L) of this Act, the Secretary of Homeland Security shall establish procedures with the Department of State to verify a company or office's existence in the United States and abroad.''

SEC. 425. MEDICAL SERVICES IN UNDERSERVED AREAS.

(a) PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 1(a) of Public Law 108–441 and section 2 of Public Law 109–477) is amended by striking 'and before June 1, 2008.'.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on June 1, 2007.

(b) PILOT PROGRAM REQUIREMENTS.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended—

(1) by adding at the end the following:

''(4)(A) Notwithstanding paragraph (1)(B), the Secretary of Homeland Security may grant up to a total of 50 waivers for a State under section 212(e) in a fiscal year if, after the first 30 such waivers for the State are granted in that fiscal year—

''(i) an interested State agency requests a waiver; and

''(ii) the requirements under subparagraph (B) are met.

''(B) The requirements under this subparagraph are met if—

''(i) fewer than 20 percent of the physician vacancies in the health professional shortage areas of the State, as designated by the Secretary of Health and Human Services, were filled in the most recent fiscal year;

''(ii) all of the waivers allotted for the State under paragraph (1)(B) were used in the most recent fiscal year; and

''(iii) all underserved highly rural States—

''(I) used the minimum guaranteed number of waivers under section 212(e) in health professional shortage areas in the most recent fiscal year; or

''(II) all agreed to waive the right to receive the minimum guaranteed number of such waivers.

''(C) In this paragraph:

''(i) The term 'health professional shortage area' has the meaning given the term in section 332(a)(1) of the Public Health Service Act (42 U.S.C. 254e(a)(1));

''(ii) The term 'underserved highly rural State' means a State with at least 30 counties with a population density of not more than 10 people per square mile, based on the latest available decennial census conducted by the Bureau of Census.

''(iii) The term 'minimum guaranteed number' means—

''(I) for the first fiscal year of the pilot program, 15;

''(II) for each subsequent fiscal year, the sum of—

''(aa) the minimum guaranteed number for the second fiscal year; and

''(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year.

''(III) for the third fiscal year, the sum of—

''(aa) the minimum guaranteed number for the second fiscal year; and

''(bb) 3, if any State received additional waivers under this paragraph in the first fiscal year.'.

(c) TERMINATION DATE.—The authority provided by the amendments made by subsection (b) shall expire on September 30, 2011.

(d) Section 212(j) of the Immigration and Nationality Act (8 U.S.C. 1182(j)) is amended by—

(1) revising the preamble of paragraph (2) to read ''An alien who has graduated from a medical school and who is coming to the United States to practice primary care or specialty medicine as a member of the medical profession may not be admitted as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title unless—''

(2) redesignating paragraph (2) as paragraph (3);

(3) adding new paragraph (2) to read—

''(2)(A) An alien who is coming to the United States to receive graduate medical education or training (or seeks to acquire status as a nonimmigrant under section 1101(a)(15)(J) to receive graduate medical education or training) may not change status under section 1258 to a nonimmigrant under section 1101(a)(15)(H)(i)(b) until the alien graduates from the medical education or training program and meets the requirements of paragraph (3)(B).

''(B) Any occupation that an alien described in paragraph (2)(A) may be employed in while receiving graduate medical education or training shall not be deemed a 'specialty occupation' within the meaning of section 1184(i) for purposes of section 1101(a)(15)(H)(i)(b).''

(e) Section 101(a)(15)(J) is amended by adding ''(except an alien coming to the United States to receive graduate medical education or training)'' after ''abandoning''.

(f) Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting ''(E), (J) who is coming to the United States to receive graduate medical education or training,'' after ''subparagraph'' where that term first appears.

(g) Medical Residents Ineligible for H–1B Nonimmigrant Status—Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended to read—

''(1) Except as provided in paragraph (3), for purposes of section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and paragraph (2), the term 'specialty occupation'—

''(A) means an occupation that requires—

''(i) theoretical and practical application of a body of highly specialized knowledge, and

''(ii) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States; and

''(B) shall not include graduate medical education or training.''

(h) Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended—

(1) in paragraph (1)(C)(i) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'';

(2) in paragraph (1)(C) by striking subclause (ii) and inserting the following:

''(ii) the alien has accepted employment with the health facility or health care organization and agrees to continue to work for a total of not less than 3 years; and

''(iii) the alien begins employment within 90 days of:

''(I) receiving such waiver; or

''(II) receiving nonimmigrant status or employment authorization pursuant to an application filed under paragraph (2)(A) (if such application is filed with 90 days of eligibility of completing graduate medical education or training under a program approved pursuant to section 212(j)(1));

''whichever is latest.''

(3) by striking at the end ''.'', inserting ''; or'' and adding new paragraph (1)(E) to read—

''(E) in the case of a request by an interested State agency, the alien agrees to practice primary care or specialty medicine care, for a continuous period of 2 years, only at a federally qualified health facility, health care organization or center, or in a rural health clinic that is located in:

''(i) a geographic area which is designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

''(ii) a State that utilized less than 10 of the total allotted waivers for the State under paragraph (1)(B) (excluding the number of waivers available pursuant to paragraph (1)(D)(ii)) in the most recent fiscal year.''

(4) in paragraph (2), by amending subparagraph (A) to read as follows:

''(A) Notwithstanding section 248(a)(2), upon submission of a request to an interested Federal agency or an interested State agency for recommendation of a waiver under this section by a physician who is maintaining valid nonimmigrant status under section 101(a)(15)(J), the Secretary of Homeland Security may accept as properly filed an application to change the status of such physician to [any applicable nonimmigrant status]. Upon favorable recommendation by the Secretary of State of such request, and approval by the Secretary of Homeland Security the waiver under this section, the Secretary of Homeland Security may change the status of such physician to that of [an appropriate nonimmigrant status.]''

(5) in paragraph (3)(A) amended by inserting ''requirement of or'' before ''agreement entered into''.

(i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSICIANS ON H-1B VISAS WHO WORK IN MEDICALLY UNDERSERVED COMMUNITIES.—Section 214(g)(5), as renumbered by Section 405 and amended by Section 719(c), is further amended by adding at the end the following new subparagraph:

''(D) The period of authorized admission under subparagraph (A) shall not apply to an alien physician who fulfills the requirements of section 214(l)(1)(E) and who has practiced primary or specialty care in a medically underserved community for a continuous period of 5 years.''

SEC. 426. B–1 VISITOR VISA GUIDELINES AND DATA TRACKING SYSTEMS.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act—

(A) the Secretary of State shall review existing regulations or internal guidelines relating to the decisionmaking process with respect to the issuance of B–1 visas by consular officers and determine whether modifications are necessary to ensure that such officers make decisions with respect to the issuance of B–1 visas as consistently as possible while ensuring security and maintaining officer discretion over such issuance determinations; and

(B) the Secretary of Homeland Security shall review existing regulations or internal guidelines relating to the decisionmaking process of Customs and Border Protection officers concerning whether travelers holding a B–1 visitor visa are admissible to the United

States and the appropriate length of stay and shall determine whether modifications are necessary to ensure that such officers make decisions with respect to travelers admissibility and length of stay as consistently as possible while ensuring security and maintaining officer discretion over such determinations.

(2) MODIFICATION.—If after conducting the reviews under paragraph (1), the Secretary of State or the Secretary of Homeland Security determine that modifications to existing regulations or internal guidelines, or the establishment of new regulations or guidelines, are necessary, the relevant Secretary shall make such modifications during the 6-month period referred to in such paragraph.

(3) CONSULTATIONS.—In making determinations and preparing guidelines under paragraph (1), the Secretary of State and the Secretary of Homeland Security shall consult with appropriate stakeholders, including consular officials and immigration inspectors.

(b) DATA TRACKING SYSTEMS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act—

(A) the Secretary of State shall develop and implement a system to track aggregate data relating to the issuance of B–1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(A); and

(B) the Secretary of Homeland Security shall develop and implement a system to track aggregate data relating to admissibility decision, and length of stays under, B–1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(B).

(2) LIMITATION.—The systems implemented under paragraph (1) shall not store or track personally identifiable information, except that this paragraph shall not be construed to limit the application of any other system that is being implemented by the Department of State or the Department of Homeland Security to track travelers or travel to the United States.

(c) PUBLIC EDUCATION.—The Secretary of State and the Secretary of Homeland Security shall carry out activities to provide guidance and education to the public and to visa applicants concerning the nature, purposes, and availability of the B–1 visa for business travelers.

(d) REPORT.—Not later than 6 and 18 months after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security shall submit to Congress, reports concerning the status of the implementation of this section.

SEC. 427. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title, and the amendments made by this title.

TITLE V—IMMIGRATION BENEFITS

SEC. 501. VISAS FOR INDIVIDUALS WITH ADVANCED DEGREES.

(a) ALIENS WITH CERTAIN ADVANCED DEGREES NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOYMENT BASED IMMIGRANTS.—

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

''(F) Aliens who have earned an advanced degree in science, technology, engineering, or math and have been working in a related field in the United States under a nonimmigrant visa during the 3-year period preceding their application for an immigrant visa under section 203(b).

''(G) Aliens described in subparagraph (A) or (B) of section 203(b)(1)(A) or who have received a national interest waiver under section 203(b)(2)(B).

''(H) The spouse and minor children of an alien who is admitted as an employment-based immigrant under section 203(b).''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any visa application—

(A) pending on the date of the enactment of this Act; or

(B) filed on or after such date of enactment.

(b) LABOR CERTIFICATION.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(III) has an advanced degree in the sciences, technology, engineering, or mathematics from an accredited university in the United States and is employed in a field related to such degree.''.

(c) TEMPORARY WORKERS.—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)''; and

(B) in subparagraph (A)—

(i) in clause (vii), by striking ''each succeeding fiscal year; or'' and inserting ''each of fiscal years 2004, 2005, and 2006;''; and

(ii) by adding after clause (vii) the following:

''(viii) 115,000 in the first fiscal year beginning after the date of the enactment of this clause; and

''(ix) the number calculated under paragraph (9) in each fiscal year after the year described in clause (viii); or'';

(2) in paragraph (5)—

(A) in subparagraph (B), by striking ''or'' at the end;

(B) in subparagraph (C), by striking the period at the end and inserting ''; or''; and (C) by adding at the end the following:

''(D) has earned an advanced degree in science, technology, engineering, or math.'';

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

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

''(9) If the numerical limitation in paragraph (1)(A)—

''(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year; or

''(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.''.

(d) APPLICABILITY.—The amendment made by subsection (c)(2) shall apply to any visa application—

(1) pending on the date of the enactment of this Act; or

(2) filed on or after such date of enactment.

SEC. 502. ELIMINATION OF EXISTING BACKLOGS.

(a) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

''(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

''(A) 290,000;

''(B) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

''(C) the difference between—

''(i) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those fiscal years; and

''(ii) the number of visas calculated under clause (i) that were issued after fiscal year 2005.

''(2) VISAS FOR SPOUSES AND CHILDREN.—Immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).''.

SEC. 503. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking ''28.6 percent'' and inserting ''15 percent'';

(2) in paragraph (2)(A), by striking ''28.6 percent'' and inserting

''15 percent'';

(3) in paragraph (3)(A)—

(A) by striking ''28.6 percent'' and inserting ''35 percent''; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking ''7.1 percent'' and inserting ''5 percent'';

(7) by inserting after paragraph (4), as redesignated, the following:

''(5) OTHER WORKERS.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States.''; and

(8) by striking paragraph (6).

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

SEC. 504. COUNTRY LIMITS.

Section 202(a) (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking '', (4), and (5)'' and inserting ''and (4)''; and

(B) by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''; and

(2) by striking paragraph (5).

SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.

(a) SECTION 201 OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1151) IS AMENDED.—

(1) in subsection (a)—

(A) by inserting 'and' at the end of paragraph (1);

(B) by striking '; and' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) SECTION 203 OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1153) IS AMENDED.—

(1) by striking subsection (c);

(2) in subsection (d), by striking '(a), (b), or (c),' and inserting '(a) or (b),';

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking '(a), (b), or (c)' and inserting '(a) or (b)'; and

(5) in subsection (g), by striking '(a), (b), and (c)' and inserting '(a) and (b)'.

(c) SECTION 204 OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1154) IS AMENDED.—

(1) by striking subsection (a)(1)(I);

(2) by redesignating subparagraphs (J), (K), and (L) of subsection (a)(1) as subparagraphs (I), (J), and (K), respectively; and

(3) in subsection (e), by striking '(a), (b), or (c)' and inserting '(a) or (b)'.

(d) REPEAL OF TEMPORARY REDUCTION IN VISAS FOR OTHER WORKERS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act, as amended (Public Law 105–100; 8 U.S.C. 1153 note), is repealed.

(e) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on October 1, 2008;

(2) No alien may receive lawful permanent resident status based on the diversity visa program on or after the effective date of this section.

(g) CONFORMING AMENDMENTS.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended by redesignating paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f), and (g), respectively.

TITLE VI—ALIENS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

SEC. 601. (a) IN GENERAL.—Notwithstanding any other provision of law, (including section 244(h) of the Immigration and Nationality Act (hereinafter 'the Act') (8 U.S.C. 1254a(h)), the Secretary may grant conditional nonimmigrant work authorization and status to aliens, or dependent of such alien described, to permit an alien, or dependent of such alien, to remain lawfully in the United States under the conditions set forth in this title.

(b) REQUIREMENTS FOR CONDITIONAL PERMANENT RESIDENT STATUS.—An alien may not be granted work authorization under this title unless the alien establishes that the alien—

''(i) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, is employed, and seeks to continue performing labor, services or education; or

''(ii) is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, and—

''(I) is the spouse or parent (65 years of age or older) of an alien described in (i); or

''(II) was, within two years of the date on which Comprehensive Immigration Act of 2007 was introduced, the spouse of an alien who was subsequently classified as a conditional nonimmigrant under this section, or is eligible for such classification, if—

''(aa) the termination of the relationship with such spouse was connected to domestic violence; and

''(bb) the spouse has been battered or subjected to extreme cruelty by the spouse or parent who is a conditional nonimmigrant.

''(iii) is under 18 years of age at the time of application for nonimmigrant status under this subparagraph, is physically present in the United States, has maintained continuous physical presence in the United States since January 1, 2007, and was born to or legally adopted by at least one parent who is at the time of application described in (i) or (ii).''.

(c) PRESENCE IN THE UNITED STATES.—

(1) IN GENERAL.—The alien shall establish that the alien was not present in lawful status in the United States on January 1, 2007, under any classification described in section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE.—For purposes of this section, an absence from the United States without authorization for a continuous period of 90 days or more than 180 days in the aggregate shall constitute a break in continuous physical presence.

(d) OTHER CRITERIA.—

(1) GROUNDS OF INELIGIBILITY.—An alien is ineligible for nonimmigrant status if the Secretary determines that the alien—

(A)(1) is inadmissible to the United States under section 212(a) of the Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(2) Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

(B) is subject to the execution of an outstanding administratively final order of removal, deportation, or exclusion;

(C) is described in or is subject to section 241(a)(5) of the Act;

(D) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(E) is an alien—

(i) for whom there are reasonable grounds for believing that the alien has committed a serious criminal offense as described in section 101(h) of the Act outside the United States before arriving in the United States; or

(ii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(F) has been convicted of—

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) 3 or more misdemeanors under Federal or State law; or

(iv) a serious criminal offense as described in section 101(h) of the Act;

(G) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(H) with respect to an applicant for derivative conditional nonimmigrant status, a derivative conditional nonimmigrant, or a derivative conditional nonimmigrant who is under 18 years of age, the alien is ineligible for conditional nonimmigrant status if the principal conditional nonimmigrant or conditional nonimmigrant status applicant is ineligible.

(I) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (C) if the alien has not been physically removed from the United States and if the alien demonstrates that his departure from the United States would result in extreme hardship to the alien or the alien's spouse, parent or child.

(2) GROUNDS OF INADMISSIBILITY.—

(A) IN GENERAL.—In determining an alien's admissibility under paragraph (1)(A)—

(i) paragraphs (6)(A)(i) (with respect to an alien present in the United States without being admitted or paroled before the date of application, but not with respect to an alien who has arrived in the United States on or after January 1, 2007), (6)(B), (6)(C)(i), (6)(C)(ii), (6)(D), (6)(F), (6)(G), (7), (9)(B), (9)(C)(i)(I), and (10)(B) of section 212(a) of the Act shall not apply, but only with respect to conduct occurring or arising before the date of application;

(ii) the Secretary may not waive—

(I) subparagraph (A), (B), (C), (D)(ii), (E), (F), (G), (H), or (I) of section 212(a)(2) of the Act (relating to criminals);

(II) section 212(a)(3) of the Act (relating to security and related grounds);

(III) with respect to an application for conditional nonimmigrant status, section 212(a)(6)(C)(i) of the Act;

(IV) paragraph (6)(A)(i) of section 212(a) of the Act (with respect to any entries occurring on or after January 1, 2007);

(V) section 212(a)(9)(C)(i)(II);

(VI) subparagraph (A), (C), or (D) of section 212(a)(10) of the Act (relating to polygamists, child abductors, and unlawful voters);

(iii) the Secretary may in his discretion waive the application of any provision of section 212(a) of the Act not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and

(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of the Act.

(e) ELIGIBILITY REQUIREMENTS.—To be eligible for conditional permanent resident an alien shall meet the following and any other applicable requirements set forth in this section:

(1) ELIGIBILITY.—The alien must not fall within a class of aliens ineligible for conditional permanent resident listed under subsection (d)(1).

(2) ADMISSIBILITY.—The alien must not be inadmissible to the United States under section 212, except as provided in subsection (d)(2), regardless of whether the alien has previously been admitted to the United States.

(3) PRESENCE.—To be eligible for conditional permanent resident status, the alien must—

(A) have been physically present in the United States before January 1, 2007, and have maintained continuous physical presence in the United States since that date;

(B) be physically present in the United States on the date of application for conditional permanent resident; and

(C) be on January 1, 2007, and on the date of application for conditional permanent resident, not present in lawful status in the United States under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(4) EMPLOYMENT.—An alien seeking conditional permanent resident status must be employed in the United States on the date of filing of the application for conditional nonimmigrant status.

(5) FEES AND PENALTIES.—

(A) PROCESSING FEES.—

(i) An alien making an initial application for conditional permanent resident status shall be required to pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application, but no more than $1,500 for a single conditional nonimmigrant.

(ii) An alien applying for extension of his conditional permanent resident status shall be required to pay a processing fee in an amount sufficient to cover administrative and other expenses associated with processing the extension application, but no more than $1,500 for a single conditional nonimmigrant.

(B) PENALTIES.—

(i) An alien making an initial application for conditional permanent resident status shall be required to pay, in addition to the processing fee in subparagraph (A), a penalty of $1,000.

(ii) A conditional nonimmigrant making an initial application for conditional nonimmigrant status shall be required to pay a

$500 penalty for each alien seeking conditional nonimmigrant status derivative to the primary conditional nonimmigrant applicant.

(iii) An alien who is a derivative conditional nonimmigrant and who has not previously been a conditional nonimmigrant, and who changes status to that of a conditional nonimmigrant, shall in addition to processing fees be required to pay the initial application penalties applicable to conditional nonimmigrants.

(C) STATE IMPACT ASSISTANCE FEE.—In addition to any other amounts required to be paid under this subsection, a conditional nonimmigrant making an initial application for conditional nonimmigrant status shall be required to pay a State impact assistance fee equal to $500.

(D) DEPOSIT AND SPENDING OF FEES.—The processing fees under subparagraph (A) shall be deposited and remain available until expended as provided by sections 286 (m) and (n).

(E) DEPOSIT, ALLOCATION, AND SPENDING OF PENALTIES.—

(i) DEPOSIT OF PENALTIES.—The penalty under subparagraph (B) shall be deposited and remain available as provided by section 286(w).

(ii) DEPOSIT OF STATE IMPACT ASSISTANCE FUNDS.—The funds under subparagraph (C) shall be deposited and remain available as provided by section 286(x).

(6) INTERVIEW.—An applicant for conditional nonimmigrant status must appear to be interviewed.

(7) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

(f) APPLICATION PROCEDURES.—

(1) IN GENERAL.—The Secretary of Homeland Security shall prescribe by notice in the Federal Register, in accordance with the procedures described in section 610 of the Comprehensive Immigration Reform of 2007 Act the procedures for an alien in the United States to apply for conditional nonimmigrant status and the evidence required to demonstrate eligibility for such status.

(2) INITIAL RECEIPT OF APPLICATIONS.—The Secretary of Homeland Security, or such other entities as are authorized by the Secretary to accept applications under the procedures established under this subsection, shall accept applications from aliens for conditional permanent resident status for a period of one year starting the first day of the first month beginning no more than 180 days after the date of enactment of this section. If, during the one-year initial period for the receipt of applications for conditional nonimmigrant status, the Secretary of Homeland Security determines that additional time is required to register applicants for conditional nonimmigrant status, the Secretary may in his discretion extend the period for accepting applications by up to 12 months.

(3) BIOMETRIC DATA.—Each alien applying for conditional nonimmigrant status must submit biometric data in accordance with procedures established by the Secretary of Homeland Security.

(g) CONTENT OF APPLICATION FILED BY ALIEN.—

(1) APPLICATION FORM.—The Secretary of Homeland Security shall create an application form that an alien shall be required to complete as a condition of obtaining conditional nonimmigrant status.

(2) APPLICATION INFORMATION.—

(A) IN GENERAL.—The application form shall request such information as the Secretary deems necessary and appropriate, including but not limited to, information concerning the alien's physical and mental health; complete criminal history, including all arrests and dispositions; gang membership, renunciation of gang affiliation; immigration history; employment history; and claims to United States citizenship.

(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) SUBMISSION OF FINGERPRINTS.—The Secretary may not accord conditional nonimmigrant status unless the alien submits fingerprints and other biometric data in accordance with procedures established by the Secretary.

(B) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct appropriate background checks of such alien to search for criminal, national security, or other law enforcement actions that would render the alien ineligible for classification under this section.

(h) TREATMENT OF APPLICANTS.—

(1) IN GENERAL.—An alien who files an application for conditional nonimmigrant status shall, upon submission of any evidence required under paragraphs (f) and (g) and after the Secretary has conducted appropriate background checks, to include name and fingerprint checks, that have not by the end of the next business day produced information rendering the applicant ineligible—

(A) be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

(B) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien is determined to be ineligible for conditional nonimmigrant status; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) unless employment authorization under subparagraph (A) is denied.

(2) TIMING OF PROBATIONARY BENEFITS.—No probationary benefits shall be issued to an alien until the alien has passed all appropriate background checks or the end of the next business day, whichever is sooner.

(3) CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under paragraph (4).

(4) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary shall provide each alien described in paragraph (1) with a counterfeit-resistant document that reflects the benefits and status set forth in paragraph (h)(1). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed. All documentary evidence of probationary benefits shall expire no later than six months after the date on which the Secretary begins to approve applications for conditional nonimmigrant status.

(5) BEFORE APPLICATION PERIOD.—If an alien is apprehended between the date of enactment and the date on which the period for initial registration closes under subsection (f)(2), and the alien can establish prima facie eligibility for conditional nonimmigrant status, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(6) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Act, if the Secretary determines that an alien who is in removal proceedings is prima facie eligible for conditional permanent nonimmigrant status, then the Secretary shall affirmatively communicate such determination to the immigration judge. The immigration judge shall then terminate or administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(i) ADJUDICATION OF APPLICATION FILED BY ALIEN.—

(1) IN GENERAL.—The Secretary may approve the issuance of documentation of status, as described in subsection (j), to an applicant for a conditional nonimmigrant visa who satisfies the requirements of this section.

(2) EVIDENCE OF CONTINUOUS PHYSICAL PRESENCE, EMPLOYMENT, OR EDUCATION.—

(A) PRESUMPTIVE DOCUMENTS.—A conditional nonimmigrant or an applicant for conditional nonimmigrant status may presumptively establish satisfaction of each required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, and that the Secretary verifies have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(B) VERIFICATION.—Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 286(x), shall within 90 days of enactment ensure that procedures are in place under which such agency shall—

(i) consistent with all otherwise applicable laws, including but not limited to laws governing privacy, provide documentation to an alien upon request to satisfy the documentary requirements of this paragraph; or

(ii) notwithstanding any other provision of law, including section 6103 of title 26, United States Code, provide verification to the Secretary of documentation offered by an alien as evidence of—

(I) presence or employment required under this section, or

(II) a requirement for any other benefit under the immigration laws.

(C) OTHER DOCUMENTS.—A conditional nonimmigrant or an applicant for conditional nonimmigrant status who is unable to submit a document described in subparagraph (i) may establish satisfaction of each required period of presence, employment, or study by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

(i) bank records;

(ii) business records;

(iii) employer records;

(iv) records of a labor union or day labor center; and

(v) remittance records.

(D) ADDITIONAL DOCUMENTS.—The Secretary may—

(i) designate additional documents to evidence the required period of presence, employment, or study; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(3) PAYMENT OF INCOME TAXES.—

(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien establishes the payment of any applicable Federal tax liability by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been paid; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(B) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of clause (i), the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required by subparagraph (D)(i) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(C) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subparagraph.

(D) IN GENERAL.—The alien may satisfy such requirement by establishing that—

(i) no such tax liability exists;

(ii) all outstanding liabilities have been met; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

(4) BURDEN OF PROOF.—An alien who is applying for a conditional nonimmigrant visa under this section shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this section.

(5) DENIAL OF APPLICATION.—

(i) An alien who fails to satisfy the eligibility requirements for a conditional nonimmigrant visa shall have his application denied and may not file additional applications.

(ii) An alien who fails to submit requested initial evidence, including requested biometric data, and requested additional evidence by the date required by the Secretary shall, except where the alien demonstrates to the satisfaction of the Secretary that such failure was reasonably excusable or was not willful, have his application considered abandoned. Such application shall be denied and the alien may not file additional applications.

(j) EVIDENCE OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Documentary evidence of nonimmigrant status shall be issued to each conditional nonimmigrant.

(2) FEATURES OF DOCUMENTATION.—Documentary evidence of conditional nonimmigrant status:

(A) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and other biometric identifiers that can be authenticated;

(B) shall be designed in consultation with U.S. Immigration and Customs Enforcement's Forensic Document Laboratory;

(C) shall, during the alien's authorized period of admission under subsection (k), serve as a valid travel and entry document for the purpose of applying for admission to the United States where the alien is applying for admission at a Port of Entry.

(D) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

(E) shall be issued to the conditional permanent resident by the Secretary of Homeland Security promptly after final adjudication of such alien's application for conditional permanent resident status, except that an alien may not be granted conditional permanent resident status until all appropriate background checks on the alien are completed to the satisfaction of the Secretary of Homeland Security.

(k) PERIOD OF AUTHORIZED ADMISSION.—

(1) INITIAL PERIOD.—The initial period of authorized admission as a conditional permanent resident shall be four years.

(2) EXTENSIONS.—

(A) IN GENERAL.—A conditional permanent resident may seek an indefinite number of four-year extensions of the initial period of authorized admission.

(B) REQUIREMENTS.—In order to be eligible for an extension of the initial or any subsequent period of authorized admission under this paragraph, an alien must satisfy the following requirements:

(i) ELIGIBILITY.—The alien must demonstrate continuing eligibility for conditional permanent resident status;

(ii) ENGLISH LANGUAGE AND CIVICS.—

(I) REQUIREMENT AT FIRST RENEWAL.—At or before the time of application for the first extension of conditional permanent resident status, an alien who is 18 years of age or older must demonstrate an attempt to gain an understanding of the English language and knowledge of United States civics by taking the naturalization test described in sections 312(a)(1) and (2) by demonstrating enrollment in or placement on a waiting list for English classes.

(II) REQUIREMENT AT SECOND RENEWAL.—At or before the time of application for the second extension of conditional permanent resident status, an alien who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2). The alien may make up to three attempts to demonstrate such understanding and knowledge but must satisfy this requirement prior to the expiration of the second extension of conditional permanent resident status.

(III) EXCEPTION.—The requirement of subclauses (I) and (II) shall not apply to any person who, on the date of the filing of the person's application for an extension of conditional permanent resident status††

(aa) is unable because of physical or developmental disability or mental impairment to comply therewith;

(bb) is over 50 years of age and has been living in the United States for periods totaling at least 20 years; or (cc) is over 55 years of age and has been living in the United States for periods totaling at least fifteen years.

(iii) EMPLOYMENT.—With respect to an extension of conditional or derivative conditional permanent resident status, an alien must demonstrate satisfaction of the employment or study requirements provided in subsection (m) during the alien's most recent authorized period of stay as of the date of application; and

(iv) FEES.—The alien must pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application, but no more than $1,500 for a single conditional permanent resident.

(C) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for extension of conditional nonimmigrant status may be required to submit to a renewed security and law enforcement background check that must be completed to the satisfaction of the Secretary of Homeland Security before such extension may be granted.

(D) TIMELY FILING AND MAINTENANCE OF STATUS.—

(i) IN GENERAL.—An extension of stay under this paragraph, or a change of status to another conditional permanent resident status under subsection (l), may not be approved for an applicant who failed to maintain conditional permanent resident status or where such status expired or terminated before the application was filed.

(ii) EXCEPTION.—Failure to file before the period of previously authorized status expired or terminated may be excused in the discretion of the Secretary and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(I) the delay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the delay commensurate with the circumstances; and

(II) the alien has not otherwise violated his conditional permanent resident status.

(iii) EXEMPTIONS FROM PENALTY AND EMPLOYMENT REQUIREMENTS.—An alien demonstrating extraordinary circumstances under clause (ii), including the spouse of a conditional permanent resident who has been battered or has been the subject of extreme cruelty perpetrated by the conditional permanent resident, and who is changing to conditional permanent resident status, may be exempted by the Secretary, in his discretion, from—

(I) the requirements under subsection (m) for a period of up to 180 days; and

(II) the penalty provisions of section (e)(6)(B)(iii), except that the alien must pay the penalty under section (e)(6)(B) at the time of application for the alien's first subsequent extension of conditional permanent resident status.

(E) BARS TO EXTENSION.—Except as provided in subparagraph (D), a conditional permanent resident shall not be eligible to extend such permanent resident status if:

(i) the alien has violated any term or condition of his or her conditional permanent resident status, including but not limited to failing to comply with the change of address reporting requirements under section 265;

(ii) the period of authorized admission of the conditional nonimmigrant has been terminated for any reason; or

(iii) with respect to a derivative conditional permanent resident, the principal alien's conditional permanent resident status has been terminated.

(l) CHANGE OF STATUS.—

(1) CHANGE FROM CONDITIONAL NONIMMIGRANT STATUS.—

(A) IN GENERAL.—A conditional nonimmigrant may not change status under section 248 to another nonimmigrant status, except another conditional nonimmigrant status or status under subparagraph (U) to section 101(a)(15).

(B) CHANGE FROM Z–A STATUS.—A Z-A nonimmigrant may change status to conditional nonimmigrant status at the time of renewal referenced in section 214A(j)(1)(C) of the Immigrant and Nationality Act.

(C) LIMIT ON CHANGES.—A conditional nonimmigrant may not change status more than one time per 365-day period. The Secretary may, in his discretion, waive the application of this subparagraph to an alien if it is established to the satisfaction of the Secretary that application of this subparagraph would result in extreme hardship to the alien.

(2) NO CHANGE TO CONDITIONAL NONIMMIGRANT STATUS.—A nonimmigrant under the immigration laws may not change status under section 248 to conditional nonimmigrant status.

(m) EMPLOYMENT.—

(1) CONDITIONAL NONIMMIGRANTS.—

(A) IN GENERAL.—A conditional nonimmigrant shall be authorized to work in the United States.

(B) CONTINUOUS EMPLOYMENT REQUIREMENT.—All requirements that an alien be employed or seeking employment for purposes of this Title shall not apply to an alien who is under 16 years or over 65 years of age. A conditional nonimmigrant between 16 and 65 years of age must remain continuously employed full time in the United States as a condition of such nonimmigrant status, except where—

(i) the alien is pursuing a full course of study at an established college, university, seminary, conservatory, trade school, academic high school, elementary school, or other academic institution or language training program;

(ii) the alien is employed while also engaged in study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or language training program;

(iii) the alien cannot demonstrate employment because of a physical or mental disability (as defined under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary; or

(iv) the alien's ability to work has ben temporarily interrupted by an event that the Secretary has determined to be a force majeure interruption.

(2) DERIVATIVE CONDITIONAL NONIMMIGRANT.—Derivative conditional nonimmigrants shall be authorized to work in the United States.

(3) PORTABILITY.—Nothing in this subsection shall be construed to limit the ability of a conditional nonimmigrant to change employers during the alien's period of authorized admission.

(n) TRAVEL OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—A conditional nonimmigrant.—

(A) may travel outside of the United States; and

(B) may be readmitted (if otherwise admissible) without having to obtain a visa if—

(i) the alien's most recent period of authorized admission has not expired;

(ii) the alien is the bearer of valid documentary evidence of conditional nonimmigrant status that satisfies the conditions set forth in section (j); and

(iii) the alien is not subject to the bars on extension described in subsection (k)(2)(E).

(2) ADMISSIBILITY.—On seeking readmission to the United States after travel outside the United States an alien granted conditional nonimmigrant status must establish that he or she is not inadmissible, except as provided by subsection (d)(2).

(3) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under paragraph (1) shall not extend the most recent period of authorized admission in the United States under subsection (k).

(o) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to a conditional nonimmigrant or an applicant for conditional nonimmigrant status under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 of the Comprehensive Immigration Reform 2007 Act have been exhausted or waived by the alien;

(B)(i) the alien is found removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227);

(ii) the alien becomes inadmissible under section 212 (except as provided in subsection (d)(2), or

(iii) the alien becomes ineligible under subsection (d)(1);

(C) the alien has used documentation issued under this section for unlawful or fraudulent purposes;

(D) in the case of the spouse or child of an alien applying for a conditional nonimmigrant visa or classified as a conditional nonimmigrant under this section, the benefits for the principal alien are terminated;

(E) with respect to a conditional nonimmigrant, the employment or study requirements under subsection (m) have been violated; or

(F) with respect to probationary benefits, the alien's application for conditional nonimmigrant status is denied.

(2) DENIAL OF IMMIGRANT VISA OR ADJUSTMENT APPLICATION.—Any application for an immigrant visa or adjustment of status to lawful permanent resident status made under this section by an alien whose conditional nonimmigrant status is terminated under paragraph (1) shall be denied.

(3) DEPARTURE FROM THE UNITED STATES.—Any alien whose period of authorized admission or probationary benefits is terminated under paragraph (1), as well as the alien's conditional a nonimmigrant dependents, shall depart the United States immediately.

(4) INVALIDATION OF DOCUMENTATION.—Any documentation that is issued by the Secretary of Homeland Security under subsection (j) or pursuant to subsection (h)(4) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

(p) REVOCATION.—If, at any time after an alien has obtained status under section 601 of the Comprehensive Immigration Reform Act of 2007 but not yet adjusted such status to that of an alien lawfully admitted for permanent resident under section 602, the Secretary may, for good and sufficient cause, if it appears that the alien was not in fact eligible for status under section 601, revoke the alien's status following appropriate notice to the alien.

(q) DISSEMINATION OF INFORMATION ON CONDITIONAL NONIMMIGRANT PROGRAM.—During the 2-year period immediately after the issuance of regulations implementing this title, the Secretary, in cooperation with entities approved by the Secretary, shall broadly disseminate information respecting conditional nonimmigrant classification under this section and the requirements to be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in no fewer than the top five principal languages, as determined by the Secretary in his discretion, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

(r) PROHIBITION ON IMMIGRANT VISA.—A conditional nonimmigrant may not be issued an immigrant visa pursuant to sections 245.

SEC. 602. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND JUDICIAL REVIEW FOR ALIENS WHO HAVE APPLIED FOR STATUS.

(a) ADMINISTRATIVE REVIEW FOR ALIENS WHO HAVE APPLIED FOR STATUS UNDER THIS TITLE.—

(1) EXCLUSIVE REVIEW.—Administrative review of a determination respecting nonimmigrant status under this title shall be conducted solely in accordance with this subsection.

(2) ADMINISTRATIVE APPELLATE REVIEW.—Except as provided in subparagraph (b)(2), an alien whose status under this title has been denied, terminated, or revoked may file not more than one appeal of the denial, termination, or rescission with the Secretary not later than 30 calendar days after the date of the decision or mailing thereof, whichever occurs later in time. The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of a denial, termination, or rescission of status under the Comprehensive Immigration Reform Act of 2007.

(3) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional newly discovered or previously unavailable evidence as the administrative appellate review authority may decide to consider at the time of the determination.

(4) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the administrative appellate review process the alien may file not more than one motion to reopen or to reconsider. The Secretary's decision whether to consider any such motion is committed to the Secretary's discretion.

(b) REMOVAL OF ALIENS WHO HAVE BEEN DENIED STATUS UNDER THIS TITLE.—

(1) SELF-INITIATED REMOVAL.—Any alien who receives a denial under subsection (a) may request, not later than 30 calendar days after the date of the denial or the mailing thereof, whichever occurs later in time, that the Secretary place the alien in removal proceedings. The Secretary shall place the alien in removal proceedings to which the alien would otherwise be subject, unless the alien is subject to an administratively final order of removal, provided that no court shall have jurisdiction to review the timing of the Secretary's initiation of such proceedings. If the alien is subject to an administratively final order of removal, the alien may seek review of the denial under this section pursuant to subsection 242(h) as though the order of removal had been entered on the date of the denial, provided that the court shall not review the order of removal except as otherwise provided by law.

(2) ALIENS WHO ARE DETERMINED TO BE INELIGIBLE DUE TO CRIMINAL CONVICTIONS.—

(A) AGGRAVATED FELONS.—Notwithstanding any other provision of this Act, an alien whose application for status under this title has been denied or whose status has been terminated or revoked by the Secretary under clause (1)(F)(ii) of subsection 601(d) of Comprehensive Immigration Reform Act of 2007 because the alien has been convicted of an aggravated felony, as defined in paragraph 101(a)(43) of the INA, may be placed forthwith in proceedings pursuant to section 238(b) of the INA.

(B) OTHER CRIMINALS.—Notwithstanding any other provision of this Act, any other alien whose application for status under this title has been denied or whose status has been terminated or revoked by the Secretary under clauses (1)(F) (i), (iii), or (iv) of subsection 601(d) of Comprehensive Immigration Reform Act of 2007 may be placed forthwith in removal proceedings under section 240 of the INA.

(C) FINAL DENIAL, TERMINATION OR RESCISSION.—The Secretary's denial, termination, or rescission of the status of any alien described in clauses (i) and (ii) of this subparagraph shall be final for purposes of subparagraph 242(h)(3)(C) of the INA and shall represent the exhaustion of all review procedures for purposes of subsections 601(h) (relating to treatment of applicants) and 601(o) (relating to termination of proceedings) of this Act, notwithstanding paragraph (a)(2) of this section.

(3) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—During the removal process under this subsection the alien may file not more than one motion to reopen or to reconsider. The Secretary's or Attorney General's decision whether to consider any such motion is committed to the Attorney General's discretion.

(c) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act is amended by adding at the end the following subsection (h):

''(h) Judicial Review of Eligibility Determinations Relating to Status Under Title VI of Comprehensive Immigration Reform Act of 2007—

''(1) EXCLUSIVE REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and

sections 1361 and 1651 of such title, and except as provided in this subsection, no court shall have jurisdiction to review a determination respecting an application for status under title VI of Comprehensive Immigration Reform Act of 2007, including, without limitation, a denial, termination, or rescission of such status.

''(2) NO REVIEW FOR LATE FILINGS.—An alien may not file an application for status under title VI of Comprehensive Immigration Reform Act of 2007 beyond the period for receipt of such applications established by subsection 601(f) thereof. The denial of any application filed beyond the expiration of the period established by that subsection shall not be subject to judicial review or remedy.

''(3) REVIEW OF A DENIAL, TERMINATION, OR RESCISSION OF STATUS UNDER TITLE VI OF COMPREHENSIVE IMMIGRATION REFORM ACT OF 2007.—A denial, termination, or rescission of status under subsection 601 of Comprehensive Immigration Reform Act of 2007 may be reviewed only in conjunction with the judicial review of an order of removal under this section, provided that:

''(A) the venue provision set forth in (b)(2) shall govern;

''(B) the deadline for filing the petition for review in (b)(1) shall control;

''(C) the alien has exhausted all administrative remedies available to the alien as of right, including but not limited to the timely filing of an administrative appeal pursuant to subsection 603(a) of Comprehensive Immigration Reform Act of 2007;

''(D) the court shall decide a challenge to the denial of status only on the administrative record on which the Secretary's denial, termination, or rescission was based;

''(E) LIMITATION ON REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court reviewing a denial, termination, or rescission of status under Title VI of Comprehensive Immigration Reform Act of 2007 may review any discretionary decision or action of the Secretary regarding any application for or termination or rescission of such status; and

''(F) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—

The alien may file not more than one motion to reopen or to reconsider in proceedings brought under this section.

'(4) STANDARD FOR JUDICIAL REVIEW.—Judicial review of the Secretary's denial, termination, or rescission of status under title VI of Comprehensive Immigration Reform Act of 2007 relating to any alien shall be based solely upon the administrative record before the Secretary when he enters a final denial, termination, or rescission. The administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. The legal determinations are conclusive unless manifestly contrary to law.

''(5) CHALLENGES ON VALIDITY OF THE SYSTEM.—

''(A) IN GENERAL.—Any claim that title VI of Comprehensive Immigration Reform Act of 2007, or any regulation, written policy, or written directive issued or unwritten policy or practice initiated by or under the authority of the Secretary of Homeland Security to implement that title, violates the Constitution of the United States or is otherwise in violation of law is available exclusively in an action instituted in the United States District Court for the District of Columbia in accordance with the procedures prescribed in this paragraph. Nothing in this subparagraph shall preclude an applicant for status under title VI of Comprehensive Immigration Reform Act of 2007 from asserting that an action taken or decision made by the Secretary with respect to his status under that title was contrary to law in a proceeding under section 603 of Comprehensive Immigration Reform Act of 2007 and paragraph (b)(2) of this section.

''(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph,

(i) must, if it asserts a claim that title VI of Comprehensive Immigration Reform Act of 2007 or any regulation, written policy, or written directive issued by or under the authority of the Secretary to implement that title violates the Constitution or is otherwise unlawful, be filed no later than one year after the date of the publication or promulgation of the challenged regulation, policy or directive or, in cases challenging the validity of the Act, within one year of enactment; and

(ii) must, if it asserts a claim that an unwritten policy or practice initiated by or under the authority of the Secretary violates the Constitution or is otherwise unlawful, be filed no later than one year after the plaintiff knew or reasonably should have known of the unwritten policy or practice.

''(C) CLASS ACTIONS.—Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with Public Law 109–2 and the Federal Rules of Civil Procedure.''

''(D) PRECLUSIVE EFFECT.—The final disposition of any claim brought under subparagraph (5)(A) shall be preclusive of any such claim asserted in a subsequent proceeding under this subsection or under any other subsection this Act.

''(E) EXHAUSTION AND STAY OF PROCEEDINGS.—No claim brought under this paragraph shall require the plaintiff to exhaust administrative remedies under subsection 603 of Comprehensive Immigration Reform Act of 2007, but nothing shall prevent the court from staying proceedings under this paragraph to permit the Secretary to evaluate an allegation of an unwritten policy or practice or to take corrective action. In issuing such a stay, the court shall take into account any harm the stay may cause to the claimant. The court shall have no authority to stay proceedings initiated under any other section of the INA.''.

SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—Except as otherwise provided in this section, no Federal agency or bureau, or any officer or employee of such agency or bureau, may—

(1) use the information furnished by the applicant pursuant to an application filed under section 601 and 602, for any purpose, other than to make a determination on the application;

(2) make any publication through which the information furnished by any particular applicant can be identified; or

(3) permit anyone other than the sworn officers, employees or contractors of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

(b) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under section 601 and 602, and any other information derived from such furnished information, to—

(1) a law enforcement entity, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested by such entity;

(2) a law enforcement entity, intelligence agency, national security agency, or component of the Department of Homeland Security in connection with a duly authorized investigation of a civil violation, in each instance about an individual suspect or group of suspects, when such information is requested by such entity; or

(3) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(c) INAPPLICABILITY AFTER DENIAL.—The limitations under subsection (a)—

(1) shall apply only until an application filed under sections 601 and 602 is denied and all opportunities for administrative appeal of the denial have been exhausted; and

(2) shall not apply to the use of the information furnished pursuant to such application in any removal proceeding or other criminal or civil case or action relating to an alien whose application has been granted that is based upon any violation of law committed or discovered after such grant.

(d) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this section, information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement and law enforcement purposes.

(e) AUDITING AND EVALUATION OF INFORMATION.—The Secretary may audit and evaluate information furnished as part of any application filed under sections 601 and 602, any application to extend such status under section 601(k), or any application to adjust status to that of an alien lawfully admitted for permanent residence under section 602, for purposes of identifying fraud or fraud schemes, and may use any evidence detected by means of audits and evaluations for purposes of investigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits.

(f) USE OF INFORMATION IN PETITIONS AND APPLICATIONS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Secretary has adjusted an alien's status to that of an alien lawfully admitted for permanent residence pursuant to section 602, then at any time thereafter the Secretary may use the information furnished by the alien in the application for adjustment of status or in the applications for status pursuant to sections 601 or 602 to make a determination on any petition or application.

(g) CRIMINAL PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

(h) CONSTRUCTION.—Nothing in this section shall be construed to limit the use, or release, for immigration enforcement purposes of information contained in files or records of the Secretary or Attorney General pertaining to an application filed under sections 601 or 602, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(i) REFERENCES.—References in this section to section 601 or 602 are references to sections 601 and 602 of this Act and the amendments made by those sections.

SEC. 605. EMPLOYER PROTECTIONS.

(a) Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for conditional nonimmigrant status shall not be used in a prosecution or investigation (civil or criminal) of that employer under section 247A (8 U.S.C. 1324a) or the tax laws of the United States for the prior unlawful employment of that

alien, regardless of the adjudication of such application or reconsideration by the Secretary of such alien's prima facie eligibility determination.

(b) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.

The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security Administration, shall implement a system to allow for the prompt enumeration of a Social Security number after the Secretary of Homeland Security has granted an alien conditional nonimmigrant status or any probationary benefits based upon application for such status.

SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR PERIODS WITHOUT WORK AUTHORIZATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by striking subsection (c) and inserting the following new subsections:

''(c)(1) Except as provided in paragraph (2), for purposes of subsections (a) and (b), no quarter of coverage shall be credited for any calendar year beginning on or after January 1, 2004, with respect to an individual who is not a natural-born United States citizen, unless the Commissioner of Social Security determines, on the basis of information provided to the Commissioner in accordance with an agreement entered into under subsection (d) or otherwise, that the individual was authorized to be employed in the United States during such quarter.

''(2) Paragraph (1) shall not apply to an individual who was assigned a social security account number prior to January 1, 2004.

''(d) Not later than 180 days after the date of the enactment of this subsection, the Secretary of Homeland Security shall enter into an agreement with the Commissioner of Social Security to provide such information as the Commissioner determines necessary to carry out the limitation on crediting quarters of coverage under subsection (c).'.

(b) BENEFIT COMPUTATION.—Section 215(e) of the Social Security Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

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

''(3) in computing the average indexed monthly earnings of an individual, there shall not be counted any wages or self-employment income for any year for which no quarter of coverage may be credited to such individual as a result of the application of section 214(c).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit applications filed on or after the date that is 180 days after the date of the enactment of this Act based on the wages or self-employment income of an individual with respect to whom a primary insurance amount has not been determined under title II of the Social Security Act (42 U.S.C. 401 et seq.) before such date.

SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES COLLECTED.

(a) The Secretary shall by regulation establish procedures allowing for the payment of 80 percent of the penalties described in Section 601(e)(6)(B) and Section 602(a)(1)(C)(v) through an installment payment plan.

(b) Any penalties received under this title with respect to an application for conditional nonimmigrant status shall be used in the following order of priority:

(1) shall be credited as offsetting collections to appropriations provided pursuant to section 611 for the fiscal year in which this Act is enacted and the subsequent fiscal year; and

(2) shall be deposited and remain available as otherwise provided under this title.

SEC. 609. LIMITATIONS ON ELIGIBILITY.

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendments made by this Act, during the period beginning on the date of the enactment of such Act and ending on the date on which the alien applies for any benefits under this title, except with respect to any forgery, fraud or misrepresentation on the application for conditional nonimmigrant status filed by the alien.

(b) PROSECUTION.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by this Act, during the period beginning on the date of the enactment of such Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien's application for such benefit is denied.

SEC. 610. RULEMAKING.

(a) The Secretary shall issue an interim final rule within six months of the date of enactment of this subtitle to implement this title and the amendments made by this title. The interim final rule shall become effective immediately upon publication in the Federal Register. The interim final rule shall sunset two years after issuance unless the Secretary issues a final rule within two years of the issuance of the interim final rule.

(b) The exemption provided under this section shall sunset no later than two years after the date of enactment of this subtitle, provided that, such sunset shall not be construed to impose any requirements on, or affect the validity of, any rule issued or other action taken by the Secretary under such exemptions.

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

(a) The first $4,400,000,000 of such penalties shall be deposited into the general fund of the Treasury as repayment of funds transferred into the Immigration Security Account under section 286(z)(1) of the Immigration and Nationality Act.

(b) Penalties in excess of $4,400,000,000 shall be deposited and remain available as otherwise provided under this Act.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 601 and 602.

Subtitle B—DREAM Act

SEC. 612. SHORT TITLE.

This subtitle may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2007' or the ''DREAM Act of 2007''.

SEC. 613. DEFINITIONS.

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this subtitle, the Secretary may beginning on the date that is three years after the date of enactment of this Act adjust to the status of an alien lawfully admitted for permanent residence an alien who is determined to be eligible for or has been issued a conditional nonimmigrant visa if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period since January 1, 2007, is under 30 years of age on the date of enactment, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has earned a high school diploma or obtained a general education development certificate in the United States;

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has—

(i) acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States; or

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of all of the secondary educational institutions that the alien attended in the United States; and

(F) The alien is in compliance with the eligibility and admissibility criteria set forth in section 601(d).

(b) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—Solely for purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), an alien who has been granted probationary benefits under section 601(h) or Z nonimmigrant status and has satisfied the requirements of subparagraphs (a)(1)(A) through (F) shall beginning on the date that is eight years after the date of enactment be considered to have satisfied the requirements of Section 316(a)(1) of the Act (8 U.S.C. 1427(a)(1)).

(c) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for adjustment of status.

(d) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this subtitle shall provide that no additional fee will

be charged to an applicant for a Z nonimmigrant visa for applying for benefits under this subtitle.

SEC. 616. HIGHER EDUCATION ASSISTANCE.

(a) Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) shall have no force or effect with respect to an alien who is a probationary Z or Z nonimmigrant.

(b) Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this title, or who is a probationary Z or Z nonimmigrant under this title and who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F), shall be eligible for the following assistance under such title IV:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 617. DELAY OF FINES AND FEES.

(a) Payment of the penalties and fees specified in section 601(e)(6) shall not be required with respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A), (B), and (F) until the date that is six years and six months after the date of enactment of this Act or the alien reaches the age of 24, whichever is later. If the alien makes all of the demonstrations specified in section 614(a)(1) by such date, the penalties shall be waived. If the alien fails to make the demonstrations specified in section 614(a)(1) by such date, the alien's Z nonimmigrant status will be terminated unless the alien pays the penalties and fees specified in section 601(e)(6) consistent with the procedures set forth in section 608 within 90 days.

(b) With respect to an alien who meets the eligibility criteria set forth in section 614(a)(1)(A) and (F), but not the eligibility criteria in section 614(a)(1)(B), the individual who pays the penalties specified in section 601(e)(6) shall be entitled to a refund when the alien makes all the demonstrations specified in section 614(a)(1).

SEC. 618. GAO REPORT.

Seven years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, which sets forth—

(1) the number of aliens who were eligible for adjustment of status under section 623(a);

(2) the number of aliens who applied for adjustment of status under section 623(a); and

(3) the number of aliens who were granted adjustment of status under section 623(a).

SEC. 619. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to carry out the amendments made by this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 620. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted nonimmigrant status pursuant to section 101(a)(15)(Z–A) of the Immigration and Nationality Act,''; and (4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted such nonimmigrant status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

Subtitle C—Agricultural Workers

SEC. 621. SHORT TITLE.

This subtitle may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2007'' or the ''AgJOBS Act of 2007''.

PART I—ADMISSION OF AGRICULTURAL WORKERS

SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.

(a) Z–A NONIMMIGRANT VISA CATEGORY.—

(1) ESTABLISHMENT.—Paragraph (15) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 601(b), is further amended by adding at the end the following new subparagraph:

''(Z–A)(i) an alien who is coming to the United States to perform any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), agricultural labor under section 3121(g) of the Internal Revenue Code of 1986, or the performance of agricultural labor or services described in subparagraph (H)(ii)(a), who meets the requirements of section 214A of this Act; or

''(ii) the spouse or minor child of an alien described in clause (i) who is residing in the United States.''.

(b) REQUIREMENTS FOR ISSUANCE OF NONIMMIGRANT VISA.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 214 the following new section:

''SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.

''(a) DEFINITIONS.—In this section:

''(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

''(2) DEPARTMENT.—The term 'Department' means the Department of Homeland Security.

''(3) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

''(4) QUALIFIED DESIGNATED ENTITY.—The term 'qualified designated entity' means—

''(A) a qualified farm labor organization or an association of employers designated by the Secretary; or

''(B) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245, the Act entitled 'An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes', approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

''(5) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

''(6) TEMPORARY.—A worker is employed on a 'temporary' basis when the employment is intended not to exceed 10 months.

''(7) WORK DAY.—The term 'work day' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

''(8) Z-A DEPENDENT VISA.—The term 'Z-A dependent visa' means a nonimmigrant visa issued pursuant to section 101(a)(15)(Z–A)(ii).

''(9) Z–A VISA—The term 'Z–A visa' means a nonimmigrant visa issued pursuant to section 101(a)(15)(Z–A)(i).

''(b) AUTHORIZATION FOR PRESENCE, EMPLOYMENT, AND TRAVEL IN THE UNITED STATES.—

''(1) IN GENERAL.—An alien issued a Z–A visa or a Z–A dependent visa may remain in, and be employed in, the United States during the period such visa is valid.

''(2) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted a Z–A visa or a Z–A dependent visa an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

''(3) AUTHORIZED TRAVEL.—An alien who is granted a Z–A visa or a Z–A dependent visa is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

''(c) QUALIFICATIONS.—

''(1) Z–A VISA.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant a Z–A visa to an alien if the Secretary determines that the alien—

(A) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006;

(B) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act;

(C) is admissible to the United States under section 212, except as otherwise provided in paragraph (4);

(D) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; and

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

''(2) Z–A Dependent Visa.—Notwithstanding any other provision of law, the Secretary shall grant a Z–A dependent visa to an alien who is—

(A) described in section 101(a)(15)(Z–A)(ii);

(B) meets the requirements of paragraph (3); and

(C) is admissible to the United States under section 212, except as otherwise provided in paragraph (4).

''(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) FINGERPRINTS.—An alien seeking a Z–A visa or a Z–A dependent visa shall submit

fingerprints to the Secretary at such time and in manner as the Secretary may require.

(B) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints provided under subparagraph (A) and other biometric data provided by an alien to conduct a background check of the alien, including searching the alien's criminal history and any law enforcement actions taken with respect to the alien and ensuring that the alien is not a risk to national security.

''(4) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for a Z–A visa or a Z–A dependent visa the following shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any provision of such section 212(a), other than the paragraphs described in subparagraph (A), in the case of individual aliens for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

''(ii) GROUNDS THAT MAY NOT BE WAIVED.—Except as provided in subparagraph (C), subparagraphs (A), (B), and (C) of paragraph (2), and paragraphs (3) and (4) of section 212(a) may not be waived by the Secretary under clause (i).

''(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

''(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for a Z–A visa or a Z–A dependent visa by reason of a ground of inadmissibility under section 212(a)(4) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

''(d) APPLICATION.—

''(1) IN GENERAL.—An alien seeking a Z–A visa shall submit an application to the Secretary for such a visa, including information regarding any Z–A dependent visa for the spouse or child of the alien.

''(2) SUBMISSION.—Applications for a Z–A visa under may be submitted—

''(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations (or similar successor regulations); or

''(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary.

''(3) PROOF OF ELIGIBILITY.—

''(A) IN GENERAL.—An alien may establish that the alien meets the requirement for a Z–A visa through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

''(B) DOCUMENTATION OF WORK HISTORY.—

''(i) BURDEN OF PROOF.—An alien applying for a Z–A visa or applying for adjustment of status described in subsection (j) has the burden of proving by a preponderance of the evidence that the alien has performed the requisite number of hours or days of agricultural employment required for such application or adjustment of status, as applicable.

''(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of such records under regulations to be promulgated by the Secretary.

''(iii) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under clause (i) to establish that the alien has performed the requisite number of hours or days of agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

''(4) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

''(A) REQUIREMENTS.—Each qualified designated entity shall agree—

''(i) to forward to the Secretary an application submitted to that entity pursuant to paragraph (2)(B) if the alien for whom the application is being submitted has consented to such forwarding;

''(ii) not to forward to the Secretary any such application if such an alien has not consented to such forwarding; and

''(iii) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

''(B) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this section to be made by the Secretary.

''(5) APPLICATION FEES.—

''(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

''(i) shall be charged for applying for a Z–A visa under this section or for an adjustment of status described in subsection (j); and

''(ii) may be charged by qualified designated entities to help defray the costs of services provided to such aliens making such an application.

''(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

''(6) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to [X].

''(7) TREATMENT OF APPLICANTS.—

''(A) IN GENERAL.—An alien who files an application under this section to receive a Z–A visa and any spouse or child of the alien seeking a Z–A dependant visa, on the date described in subparagraph (B)—

''(i) shall be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

''(ii) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

''(iii) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien is determined to be ineligible for Z–A visa; and

''(iv) may not be considered an unauthorized alien (as defined in section 274A) until the date on which [the alien's application for a Z–A visa] is denied.

''(B) TIMING OF PROBATIONARY BENEFITS.—

''(i) IN GENERAL.—Subject to clause (ii), an alien who submits an application for a Z–A visa under subsection (d), including any evidence required under such subsection, and any spouse or child of the alien seeking a Z–A dependent visa shall receive the probationary benefits described in clauses (i) through (iv) of subparagraph (A) at the earlier of—

''(I) the date and time that the alien has passed all appropriate background checks, including name and fingerprint checks; or

''(II) the end of the next business day after the date that the Secretary receives the alien's application for Z–A visa.

''(ii) EXCEPTION.—If the Secretary determines that the alien fails the background checks referred to in clause (i)(I), the alien may not be granted probationary benefits described in clauses (i) through (iv) of subparagraph (A).

''(C) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary shall provide each alien granted probationary benefits described in clauses (i) through (iv) of subparagraph (A) with a counterfeit-resistant document that reflects the benefits and status set forth in subparagraph (A). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed.

''(D) CONSTRUCTION.—Nothing in this section may be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under this paragraph.

''(8) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

''(A) BEFORE APPLICATION PERIOD.—Beginning on the date of enactment of the AgJOBS Act of 2007, the Secretary shall provide that, in the case of an alien who is apprehended prior to the first date of the application period described in subsection (c)(1)(B) and who can establish a nonfrivolous case of eligibility for a Z–A visa (but for the fact that the alien may not apply for such status until the beginning of such period), the alien—

''(i) may not be removed; and

''(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

''(B) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for Z–A visa during the application period described in subsection (c)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

''(i) may not be removed; and

''(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

''(e) NUMERICAL LIMITATIONS.—

''(1) Z–A VISA.—The Secretary may not issue more than 1,500,000 Z–A visas.

''(2) Z–A DEPENDENT VISA.—.The Secretary may not count any Z–A dependent visa issued against the numerical limitation described in paragraph (1).

''(f) EVIDENCE OF NONIMMIGRANT STATUS.—

''(1) IN GENERAL.—Documentary evidence of nonimmigrant status shall be issued to each alien granted a Z–A visa or a Z–A dependent visa.

''(2) FEATURES OF DOCUMENTATION.—Documentary evidence of a Z–A visa or a Z–A dependent visa—

''(A) shall be machine-readable, tamper-resistant, and shall contain a digitized photograph and other biometric identifiers that can be authenticated;

''(B) shall be designed in consultation with U.S. Immigration and Customs Enforcement's Forensic Document Laboratory;

''(C) shall serve as a valid travel and entry document for an alien granted a Z–A visa or a Z–A dependent visa for the purpose of applying for admission to the United States where the alien is applying for admission at a port of entry;

''(D) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A; and

''(E) shall be issued to the alien granted the visa by the Secretary promptly after final adjudication of such alien's application for the visa, except that an alien may not be granted a Z–A visa or a Z–A dependent visa until all appropriate background checks on each alien are completed to the satisfaction of the Secretary.

''(g) FINE.—An alien granted a Z–A visa shall pay a fine of $100 to the Secretary.

''(h) TREATMENT OF ALIENS GRANTED A Z–A VISA.—

''(1) IN GENERAL.—Except as otherwise provided under this subsection, an alien granted a Z–A visa or a Z–A dependent visa shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of this Act.

''(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted a Z–A visa shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under subsection (d).

''(3) TERMS OF EMPLOYMENT.—

''(A) PROHIBITION.—No alien granted a Z–A visa may be terminated from employment by any employer during the period of a Z–A visa except for just cause.

''(B) TREATMENT OF COMPLAINTS.—

''(i) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted a Z–A visa who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

''(ii) INITIATION OF ARBITRATION.—If the Secretary finds that an alien has filed a complaint in accordance with clause (i) and there is reasonable cause to believe that the alien was terminated from employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

''(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding under this subparagraph in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

''(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted a Z–A visa without just cause, the Secretary shall credit the alien for the number of days of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of subsection (f)(2).

''(v) TREATMENT OF ATTORNEY'S FEES.—Each party to an arbitration under this subparagraph shall bear the cost of their own attorney's fees for the arbitration.

''(vi) NONEXCLUSIVE REMEDY.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

''(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

''(4) RECORD OF EMPLOYMENT.—

''(A) IN GENERAL.—Each employer of an alien who is granted a Z–A visa shall annually.—

''(i) provide a written record of employment to the alien; and

''(ii) provide a copy of such record to the Secretary.

''(B) CIVIL PENALTIES.—

''(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted a Z–A visa has failed to provide the record of employment required under subparagraph (A) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

''(ii) LIMITATION.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this subsection.

''(i) TERMINATION OF A GRANT OF Z–A VISA.—

''(1) IN GENERAL.—The Secretary may terminate a Z–A visa or a Z–A dependent visa granted to an alien only if the Secretary determines that the alien is deportable.

''(2) GROUNDS FOR TERMINATION.—Prior to the date that an alien granted a Z–A visa or a Z–A dependent visa becomes eligible for adjustment of status described in subsection (j), the Secretary may deny adjustment to permanent resident status and provide for termination of the alien's Z–A visa or Z–A dependent visa if—

''(A) the Secretary finds, by a preponderance of the evidence, that the grant of a Z–A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

''(B) the alien—

''(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(4);

''(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

''(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

''(iv) in the case of an alien granted a Z–A visa, fails to perform the agricultural employment described in subsection (j)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in subsection (j)(1)(A)(iii).

''(3) REPORTING REQUIREMENT.—The Secretary shall promulgate regulations to ensure that the alien granted a Z–A visa complies with the qualifying agricultural employment described in subsection (j)(1)(A) at the end of the 5-year work period, which may include submission of an application pursuant to this subsection.

''(j) ADJUSTMENT TO PERMANENT RESIDENCE.—

''(1) Z–A VISA.—Except as provided in this subsection, the Secretary shall adjust the status of an alien granted a Z–A visa to that of an alien lawfully admitted for permanent residence under this Act, if the Secretary determines that the following requirements are satisfied:

''(A) QUALIFYING EMPLOYMENT.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), the alien has performed at least—

''(I) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of enactment of the AgJobs Act of 2007; or

''(II) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on such date of enactment.

''(ii) FOUR-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of clause (i) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on such date of enactment.

''(iii) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement of clause (i), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that clause if the alien was unable to work in agricultural employment due to—

''(I) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

''(II) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

''(III) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

''(B) PROOF.—An alien may demonstrate compliance with the requirements of subparagraph (A) by submitting—

''(i) the record of employment described in subsection (h)(4); or

''(ii) such documentation as may be submitted under subsection (d)(3).

''(C) APPLICATION PERIOD.—Not later than 8 years after the date of the enactment of the AgJOBS Act of 2007, the alien must—

''(i) apply for adjustment of status; or

''(ii) renew the alien's Z visa status as described in section 601(k)(2).

''(D) FINE.—The alien pays to the Secretary a fine of $400; or

''(2) SPOUSES AND MINOR CHILDREN.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under paragraph (1), including any individual who was a minor child on the date such alien was granted a Z–A visa, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

''(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted a Z–A visa or a Z–A dependent visa an adjustment of status under this Act and provide for termination of such visa if—

''(A) the Secretary finds by a preponderance of the evidence that grant of the Z–A visa was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

''(B) the alien—

''(i) commits an act that makes the alien inadmissible to the United States under section 212, except as provided under subsection (c)(4);

''(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

''(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

''(4) GROUNDS FOR REMOVAL.—Any alien granted Z–A visa status who does not apply for adjustment of status or renewal of Z status under section 601(k)(2) prior to the expiration of the application period described in subsection (c)(1)(B) or who fails to meet the other requirements of paragraph (1) by the end of the application period, is deportable and may be removed under section 240.

''(5) PAYMENT OF TAXES.—

''(A) IN GENERAL.—Not later than the date on which an alien's status is adjusted as described in this subsection, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

''(i) no such tax liability exists;

''(ii) all such outstanding tax liabilities have been paid; or

''(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

''(B) APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the term 'applicable Federal tax liability' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under paragraph (1)(A) for which the statutory period for assessment of any deficiency for such taxes has not expired.

''(C) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

''(6) ENGLISH LANGUAGE.—

''(A) IN GENERAL.—Not later than the date on which a Z–A nonimmigrant's status is adjusted or renewed under section 601(k)(2), a Z–A nonimmigrant who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2).

''(B) EXCEPTION.—The requirement of subparagraph (A) shall not apply to any person who, on the date of the filing of the person's application for an extension of Z–A nonimmigrant status—

(i) is unable because of physical or developmental disability or mental impairment to comply therewith;

(ii) is over fifty years of age and has been living in the United States for periods totaling at least twenty years, or

(iii) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years.

''(7) PRIORITY OF APPLICATIONS.—

''(A) BACK OF LINE.—An alien may not adjust status to that of a lawful permanent resident under this subsection until 30 days after the date on which an immigrant visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act that were filed before May 1, 2005 (referred to in this paragraph as the 'processing date').

''(B) OTHER APPLICANTS.—The processing of applications for an adjustment of status under this subsection shall be processed not later than 1 year after the processing date.

''(C) CONSULAR APPLICATION.—

(i) IN GENERAL.—A Z–A nonimmigrant's application for adjustment of status to that of an alien lawfully admitted for permanent residence must be filed in person with a United States consulate abroad.

(ii) PLACE OF APPLICATION.—Unless otherwise directed by the Secretary of State, a Z–A nonimmigrant applying for adjustment of status under this paragraph shall make an application at a consular office in the alien's country of origin. The Secretary of State shall direct a consular office in a country that is not a Z–A nonimmigrant's country of origin to accept an application for adjustment of status from such an alien, where the Z–A nonimmigrant's country of origin is not contiguous to the United States, and as consular resources make possible.

''(k) CONFIDENTIALITY OF INFORMATION.—Applicants for Z–A nonimmigrant status under this subtitle shall be afforded confidentiality as provided under section 604.

''(l) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

''(1) CRIMINAL PENALTY.—Any person who—

''(A) applies for a Z–A visa or a Z–A dependent visa under this section or an adjustment of status described in subsection (j) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

''(B) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

''(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

''(m) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for a Z–A visa under subsection (b) or an adjustment of status under subsection (j).

''(n) ADMINISTRATIVE AND JUDICIAL REVIEW.—Administrative or judicial review of a determination on an application for a Z–A visa shall be such as is provided under section 603.

''(o) PUBLIC OUTREACH.—Beginning not later than the first day of the application period described in subsection (c)(1)(B), the Secretary shall cooperate with qualified designated entities to broadly disseminate information regarding the availability of Z–A visas, the benefits of such visas, and the requirements to apply for and be granted such a visa.''.

(c) NUMERICAL LIMITATIONS.—

(1) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as amended by [XX], is further amended—

(A) in subparagraph (A), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (N)''; and

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

''(N) Aliens issued a Z–A visa or a Z–A dependent visa (as those terms are defined in section 214A) who receive an adjustment of status to that of an alien lawfully admitted for permanent residence.''.

(2) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR Z–A NONIMMIGRANTS.—An immigrant visa may be made available to an alien issued a Z–A visa or a Z–A dependent visa (as those terms are defined in section 214A) without regard to the numerical limitations of this section.''.

(d) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 214 the following:

''Sec. 214A. Admission of agricultural worker.''.

SEC. 623. AGRICULTURAL WORKER IMMIGRATION STATUS ADJUSTMENT ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(y) AGRICULTURAL WORKER IMMIGRATION STATUS ADJUSTMENT ACCOUNT.—

''(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Agricultural Worker Immigration Status Adjustment Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214A.

''(2) USE OF FEES.—The fees deposited into the Agricultural Worker Immigration Status Adjustment Account shall be used by the Secretary of Homeland Security for processing applications made by aliens seeking nonimmigrant status under section 101(a)(15)(Z–A) or for processing applications made by such an alien who is seeking an adjustment of status.

''(3) AVAILABILITY OF FUNDS.—All amounts deposited in the Agricultural Worker Immigration Status Adjustment Account under this subsection shall remain available until expended.''.

SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to carry out the amendments made by this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation.

SEC. 625. LIMITATION ON CLAIMING EARNED INCOME TAX CREDIT.

Any alien who is unlawfully present in the United States, receives adjustment of status

under section 601 of this Act (relating to aliens who were illegally present in the United States prior to January 1, 2007), or enters the United States to work on a Y visa under section 402 of this Act, shall not be eligible for the tax credit provided under section 32 of the Internal Revenue Code (relating to earned income) until such alien has his or her status adjusted to legal permanent resident status.

SEC. 626. EARNED INCOME TAX CREDIT.

Nothing in this Act, or the amendments made by this Act, may be construed to modify any provision of the Internal Revenue Code of 1986 which prohibits illegal aliens from qualifying for earned income tax credit under section 32 of such Code.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 627. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted nonimmigrant status pursuant to section 101(a)(15)(Z–A) of the Immigration and Nationality Act,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted such nonimmigrant status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

TITLE VII—MISCELLANEOUS

Subtitle A—Miscellaneous Immigration Reform

SEC. 701. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.

Notwithstanding any other provision of law or any regulation, for aliens currently serving in the U.S. Armed Forces overseas and applying for naturalization from overseas, the Secretary of Defense shall provide in a form designated by the Secretary of Homeland Security, and the Secretary of Homeland Security shall use the fingerprints provided by the Secretary of Defense for such individuals, if the individual—

(a) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

(b) was fingerprinted in accordance with the requirements of the Secretary of Defense at the time the individual enlisted in the Armed Forces; and

(c) submits the application to become a naturalized citizen of the United States not later than 12 months after the date the applicant is fingerprinted.

SEC. 702. ENGLISH AS NATIONAL LANGUAGE.

(a) SHORT TITLE.—This section may be cited as the 'S.I. Hayakawa National Language Amendment Act of 2007'.

(b) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''Sec.
''161. Declaration of national language.
''162. Preserving and enhancing the role of the national language.
''163. Use of language other than English.

''SEC. 161. DECLARATION OF NATIONAL LANGUAGE.

''English shall be the national language of the Government of the United States.

''SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE NATIONAL LANGUAGE.

''(a) IN GENERAL.—The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

''(b) EXCEPTION.—Unless specifically provided by statute, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If an exception is made with respect to the use of a language other than English, the exception does not create a legal entitlement to additional services in that language or any language other than English.

''(c) FORMS.—If any form is issued by the Federal Government in a language other than English (or such form is completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.

''SEC. 163. USE OF LANGUAGE OTHER THAN ENGLISH.

''Nothing in this chapter shall prohibit the use of a language other than English.''.

(c) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following new item:

''6. Language of the Government —161''.

SEC. 703. DECLARATION OF ENGLISH AS LANGUAGE.

(a) IN GENERAL.—English is the common language of the United States.

(b) PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.—The Government of the United States shall preserve and enhance the role of English as the language of the United States. Nothing in this Act shall diminish or expand any existing rights under the laws of the United States relative to services or materials provided by the Government of the United States in any language other than English.

(c) DEFINITION OF LAW.—For purposes of this section, the term ''laws of the United States'' includes the Constitution of the United States, any provision of Federal statute, or any rule or regulation issued under such statute, any judicial decisions interpreting such statute, or any Executive Order of the President.

SEC. 704. PILOT PROJECT REGARDING IMMIGRATION PRACTITIONER COMPLAINTS.

(a) Within 180 days of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Attorney General, shall institute a three-year pilot project to—

(1) Encourage alien victims of immigration practitioner fraud, and related crimes, to come forward and file practitioner fraud complaints with the Department of Homeland Security by utilizing existing statutory and administrative authority;

(2) Cooperate with Federal, State, and local law enforcement officials who are responsible for investigating and prosecuting such crimes; and

(3) Increase public awareness regarding the problem of immigration practitioner fraud.

(b) REPORTING.—Not later than 1 year after the end of the three-year pilot period, the Secretary of Homeland Security shall submit to Congress a report that includes information concerning—

(1) the number of individuals who file practitioner fraud complaints via the pilot program;

(2) the demographic characteristics, nationality, and immigration status of the complainants;

(3) the number of indictments that result from the pilot; and

(4) the number of successful fraud prosecutions that result from the pilot.

Subtitle B—Assimilation and Naturalization

SEC. 705. THE OFFICE OF CITIZENSHIP AND INTEGRATION.

Section 451(f) of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 271(f)), is amended by—

(1) inserting ''and Integration'' after ''Office of Citizenship'' the two times that phrase appears; and

(2) in paragraph (f)(2), striking ''instruction and training on citizenship responsibilities'' and inserting ''civic integration, and instruction and training on citizenship responsibilities and requirements for citizenship''.

SEC. 706. SPECIAL PROVISIONS FOR ELDERLY IMMIGRANTS.

Section 312(b) of the Immigration and Nationality Act (8 U.S.C. 1423(b)) is amended by adding at the end the following: ''(4) The requirements of subsection (a) of this section shall not apply to a person who is over 75 years of age on the date of filing an application for naturalization; Provided that, the person expresses, in English or in the applicant's native language, at the time of examination for naturalization that the person understands and agrees to the elements of the oath required by section 337 of this Act.''.

SEC. 707. FUNDING FOR THE OFFICE OF CITIZENSHIP AND INTEGRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Homeland Security the sum of [$100] million to carry out the mission and operations of the Office of Citizenship and Integration in U.S. Citizenship and Immigration Services, including the patriotic integration of prospective citizens into—

(1) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(2) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

SEC. 708. CITIZENSHIP AND INTEGRATION COUNCILS.

(a) GRANTS AUTHORIZED.—The Office of Citizenship and Immigrant Integration shall provide grants to States and municipalities for effective integration of immigrants into American society through the creation of New Americans Integrations Councils.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) To report on the status of new immigrants, lawful permanent residents, and citizens within the State or municipality;

(B) To conduct a needs assessment, including the availability of and demand for English language services and instruction classes, for new immigrants, lawful permanent residents, Z non-immigrants, and citizens;

(C) To convene public hearings and meetings to assist in the development of a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens; and

(D) To develop a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens into States and municipalities.

(2) MEMBERSHIP OF INTEGRATION COUNCILS.—New Americans Integration Councils established under this section shall consist of no less than ten and no more than fifteen individuals from the following sectors:

(A) State and local government;

(B) Business;

(C) Faith-based organizations;

(D) Civic organizations;
(E) Philanthropic leaders; and
(F) Nonprofit organizations with experience working with immigrant communities.

(c) REPORTING.—The Government Accountability Office, in coordination with the Office of Citizenship and Immigrant Integration, shall conduct an annual evaluation of the grant program conducted under this section. Such evaluation shall be used by the Office of Citizenship and Immigrant Integration—

(1) To determine and improve upon the program's effectiveness;

(2) To develop recommended best practices for states and municipalities who receive grant awards; and

(3) To further define the program's goals and objectives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Citizenship and Immigrant Integration such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

SEC. 709. PRESIDENTIAL AWARD FOR BUSINESS LEADERSHIP IN PROMOTING AMERICAN CITIZENSHIP.

(a) ESTABLISHMENT.—There is established the Presidential Award for Business Leadership in Promoting American Citizenship, which shall be awarded to companies and other organizations that make extraordinary efforts in assisting their employees and members to learn English and increase their understanding of American history and civics.

(b) SELECTION AND PRESENTATION OF AWARD.—

(1) SELECTION.—The President, upon recommendations from the Secretary, the Secretary of Labor, and the Secretary of Education, shall periodically award the Citizenship Education Award to large and small companies and other organizations described in subsection (a).

(2) PRESENTATION.—The presentation of the award shall be made by the President, or designee of the President, in conjunction with an appropriate ceremony.

SEC. 710. HISTORY AND GOVERNMENT TEST.

(a) HISTORY AND GOVERNMENT TEST.—The Secretary shall incorporate a knowledge and understanding of the meaning of the Oath of Allegiance provided by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448) into the history and government test given to applicants for citizenship. Nothing in this Act, other than the amendment made by this subsection, shall be construed to influence the naturalization test redesign process currently underway under the direction of U.S. Citizenship and Immigration Services.

SEC. 711. ENGLISH LEARNING PROGRAM.

(a) The Secretary of Education shall develop an open source electronic program, useable on personal computers and through the Internet, that teaches the English language at various levels of proficiency, up to and including the ability to pass the Test of English as a Foreign Language, to individuals inside the United States whose primary language is a language other than English. The Secretary shall make the program available to the public for free, including by placing it on the Department of Education website, and shall ensure that it is readily accessible to public libraries throughout the United States. The program shall be fully accessible, at a minimum, to speakers of the top five foreign languages spoken inside the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Education such sums as are necessary to carry out the purposes of this section.

SEC. 712. GAO STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION APPEALS.

(a) IN GENERAL.—The Comptroller General of the United States shall, not later than 180 days after enactment of this Act, conduct a study on the appellate process for immigration appeals.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Comptroller General shall consider the possibility of consolidating all appeals from the Board of Immigration Appeals and habeas corpus petitions in immigration cases into 1 United States Court of Appeals, by—

(1) consolidating all such appeals into an existing circuit court, such as the United States Court of Appeals for the Federal Circuit;

(2) consolidating all such appeals into a centralized appellate court consisting of active circuit court judges temporarily assigned from the various circuits, in a manner similar to the Foreign Intelligence Surveillance Court or the Temporary Emergency Court of Appeals; or

(3) implementing a mechanism by which a panel of active circuit court judges shall have the authority to reassign such appeals from circuits with relatively high caseloads to circuits with relatively low caseloads.

(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Comptroller General, in consultation with the Attorney General, the Secretary, and the Judicial Conference of the United States, shall consider—

(1) the resources needed for each alternative, including judges, attorneys and other support staff, case management techniques including technological requirements, physical infrastructure, and other procedural and logistical issues as appropriate;

(2) the impact of each plan on various circuits, including their caseload in general and caseload per panel;

(3) the possibility of utilizing case management techniques to reduce the impact of any consolidation option, such as requiring certificates of reviewability, similar to procedures for habeas and existing summary dismissal procedures in local rules of the courts of appeals;

(4) the effect of reforms in this Act on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee awards with respect to review of final orders of removal.

Subtitle C—American Competitiveness Scholarship Program

SEC. 713. AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT.—The Director of the National Science Foundation (referred to in this section as the 'Director') shall award scholarships to eligible individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, health care, or computer science.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a scholarship under this section, an individual shall—

(A) be a citizen of the United States, a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), an alien admitted as a refugee under section 207 of such Act (8 U.S.C. 1157), or an alien lawfully admitted to the United States for permanent residence;

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

(C) certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, nursing, medicine, or other clinical medical program, or technology, or science program designated by the Director.

(2) ABILITY.—Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(c) AMOUNT OF SCHOLARSHIP; RENEWAL.—

(1) AMOUNT OF SCHOLARSHIP.—The amount of a scholarship awarded under this section shall be $15,000 per year, except that no scholarship shall be greater than the annual cost of tuition and fees at the institution of higher education in which the scholarship recipient is enrolled or will enroll.

(2) RENEWAL.—The Director may renew a scholarship under this section for an eligible individual for not more than 4 years.

(d) FUNDING.—The Director shall carry out this section only with funds made available under section 286(x) of the Immigration and Nationality Act (as added by section 712) (8 U.S.C. 1356).

(e) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of this Act, the Director shall publish in the Federal Register a list of eligible programs of study for a scholarship under this section.

SEC. 714. SUPPLEMENTAL H–1B NONIMMIGRANT PETITIONER ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) (as amended by this Act) is further amended by inserting after subsection (w) the following:

''(x) SUPPLEMENTAL H–1B NONIMMIGRANT PETITIONER ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Supplemental H–1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of this Act, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(15).

''(2) USE OF FEES FOR AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM—.The amounts deposited into the Supplemental H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 711 of the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 for students enrolled in a program of study leading to a degree in mathematics, engineering, health care, or computer science.''.

SEC. 715. SUPPLEMENTAL FEES.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

''(15)(A) In each instance where the Attorney General, the Secretary of Homeland Security, or the Secretary of State is required to impose a fee pursuant to paragraph (9) or (11), the Attorney General, the Secretary of Homeland Security, or the Secretary of

State, as appropriate, shall impose a supplemental fee on the employer in addition to any other fee required by such paragraph or any other provision of law, in the amount determined under subparagraph (B).

''(B) The amount of the supplemental fee shall be $3,500, except that the fee shall be ½ that amount for any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

''(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(x).''.

TITLE VIII—MISCELLANEOUS

Subtitle A—Unaccompanied Alien Child Protection Act of 2007

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2007''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION
Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.
TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL
Sec. 201. Child advocates.
Sec. 202. Counsel.
Sec. 203. Effective date; applicability.
TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN
Sec. 301. Special immigrant juvenile classification.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS
Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
TITLE V—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002
Sec. 501. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 502. Technical corrections.
Sec. 503. Effective date.
TITLE VI—AUTHORIZATION OF APPROPRIATIONS
Sec. 601. Authorization of appropriations.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney, or a representative authorized to represent unaccompanied alien children in immigration proceedings or matters, who—

(A) complies with the duties set forth in this Act;

(B) is—

(i) properly qualified to handle matters involving unaccompanied alien children; or

(ii) working under the auspices of a qualified nonprofit organization that is experienced in handling such matters; and

(C) if an attorney—

(i) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia; and

(ii) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law.

(2) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office.

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the meaning given the term in 101(a)(51) of the Immigration and Nationality Act, as added by subsection (b).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained 18 years of age; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained 18 years of age; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—

''(1) STATE COURTS ACTING IN LOCO PARENTIS.—A department or agency of a State, or an individual or entity appointed by a State court or a juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(2) CLARIFICATION OF THE DEFINITION OF UNACCOMPANIED ALIEN CHILD.—For the purposes of section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) and this Act, a parent or legal guardian shall not be considered to be available to provide care and physical custody of an alien child unless such parent is in the physical presence of, and able to exercise parental responsibilities over, such child at the time of such child's apprehension and during the child's detention.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), an immigration officer who finds an unaccompanied alien child described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country, which is contiguous with the United States and has an agreement in writing with the United States that provides for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country, shall be treated in accordance with paragraph (1) if the Secretary determines, on a case-by-case basis, that—

(i) such child is a national or habitual resident of a country described in this subparagraph;

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child's native language—

(i) to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Department of Justice shall retain or assume the custody and care of any unaccompanied alien who is—

(i) in the custody of the Department of Justice pending prosecution for a Federal crime other than a violation of the Immigration and Nationality Act; or (ii) serving a sentence pursuant to a conviction for a Federal crime.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Department shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could

personally endanger the national security of the United States.

(2) NOTIFICATION.—

(A) IN GENERAL.—Each department or agency of the Federal Government shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of such department or agency is an unaccompanied alien child;

(iii) any claim by an alien in the custody of such department or agency that such alien is younger than 18 years of age; or

(iv) any suspicion that an alien in the custody of such department or agency who has claimed to be at least 18 years of age is actually younger than 18 years of age.

(B) SPECIAL RULE.—The Director shall—

(i) make an age determination for an alien described in clause (iii) or (iv) of subparagraph (A) in accordance with section 105; and

(ii) take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or under this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—Any Federal department or agency that has an unaccompanied alien child in its custody shall transfer the custody of such child to the Office—

(i) not later than 72 hours after a determination is made that such child is an unaccompanied alien, if the child is not described in subparagraph (B) or (C) of paragraph (1);

(ii) if the custody and care of the child has been retained or assumed by the Attorney General under paragraph (1)(B) or by the Department under paragraph (1)(C), following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) if the child was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DEPARTMENT.—The Director shall transfer the care and custody of an unaccompanied alien child in the custody of the Office or the Department of Justice to the Department upon determining that the child is described in subparagraph (B) or (C) of paragraph (1).

(C) PROMPTNESS OF TRANSFER.—If a child needs to be transferred under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—If the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made in accordance with section 105, unless otherwise specified in subsection (b)(2)(B).

(d) ACESS TO ALIEN.—The Secretary and the Attorney General shall permit the Office to have reasonable access to aliens in the custody of the Secretary or the Attorney General to ensure a prompt determination of the age of such alien, if necessary under subsection (b)(2)(B).

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT OF RELEASED CHILDREN.—

(1) ORDER OF PREFERNECE.—Subject to the discretion of the Director under paragraph (4), section 103(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody under paragraph (3)(A).

(B) A legal guardian who seeks to establish custody under paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well being of the child.

(E) A State-licensed family foster home, small group home, or juvenile shelter willing to accept custody of the child.

(F) A qualified adult or entity, as determined by the Director by regulation, seeking custody of the child if the Director determines that no other likely alternative to long-term detention exists and family reunification does not appear to be a reasonable alternative.

(2) SUITABLILITY ASSESSMENT.—

(A) GENERAL REQUIREMENTS.—Notwithstanding paragraph (1), and subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity described in any of subparagraphs (A) through (F) of paragraph (1) unless the Director provides written certification that the proposed custodian is capable of providing for the child's physical and mental well-being, based on.—

(i) with respect to an individual custodian—

(I) verification of such individual's identity and employment;

(II) a finding that such individual has not engaged in any activity that would indicate a potential risk to the child, including the people and activities described in paragraph (4)(A)(i);

(III) a finding that such individual is not the subject of an open investigation by a State or local child protective services authority due to suspected child abuse or neglect;

(IV) verification that such individual has a plan for the provision of care for the child;

(V) verification of familial relationship of such individual, if any relationship is claimed; and

(VI) verification of nature and extent of previous relationship;

(ii) with respect to a custodial entity, verification of such entity's appropriate licensure by the State, county, or other applicable unit of government; and

(iii) such other information as the Director determines appropriate.

(B) HOME STUDY.—

(i) IN GENERAL.—The Director shall place a child with any custodian described in any of subparagraphs (A) through (F) of paragraph (1) unless the Director determines that a home study with respect to such custodian is necessary.

(ii) SPECIAL NEEDS CHILDREN.—A home study shall be conducted to determine if the custodian can properly meet the needs of—

(I) a special needs child with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)); or

(II) a child who has been the object of physical or mental injury, sexual abuse, negligent treatment, or maltreatment under circumstances which indicate that the child's health or welfare has been harmed or threatened.

(iii) FOLLOW-UP SERVICES.—The Director shall conduct follow-up services for at least 90 days on custodians for whom a home study was conducted under this subparagraph.

(C) CONTRACT AUTHORITY.—The Director may, by grant or contract, arrange for some or all of the activities under this section to be carried out by—

(i) an agency of the State of the child's proposed residence;

(ii) an agency authorized by such State to conduct such activities; or

(iii) an appropriate voluntary or nonprofit agency.

(D) DATABASE ACCESS.—In conducting suitability assessments, the Director shall have access to all relevant information in the appropriate Federal, State, and local law enforcement and immigration databases.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination regarding the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including—

(I) the Convention on the Civil Aspects of International Child Abduction, done at The Hague, October 25, 1980 (TIAS 11670);

(II) the Vienna Declaration and Program of Action, adopted at Vienna, June 25, 1993; and

(III) the Declaration of the Rights of the Child, adopted at New York, November 20, 1959; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or of the Department, and any grantee or contractor of the Office or of the Department, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department, and any grantee or contractor of the Office, who believes that a competent attorney or representative has been a participant in any activity described in subparagraph (A), shall report the attorney to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, including private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—

(1) IN GENERAL.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may only be used to determine such person's qualifications under subsection (a)(1).

(2) NONDISCLOSURE OF INFORMATION.—In consideration of the needs and privacy of unaccompanied alien children in the custody of the Office or its agents, and the necessity to guarantee the confidentiality of such children's information in order to facilitate their trust and truthfulness with the Office, its agents, and clinicians, the Office shall maintain the privacy and confidentiality of all information gathered in the course of the care, custody, and placement of unaccompanied alien children, consistent with its role and responsibilities under the Homeland Security Act to act as guardian in loco parentis in the best interest of the unaccompanied alien child, by not disclosing such information to other government agencies or nonparental third parties.

(c) REQUIRED DISCLOSURE.—The Secretary or the Secretary of Health and Human Services shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) ORDER OF PREFERENCE.—An unaccompanied alien child who is not released pursuant to section 102(a)(1) shall be placed in the least restrictive setting possible in the following order of preference:

(A) Licenced family foster home.

(B) Small group home.

(C) Juvenile shelter.

(D) Residential treatment center.

(E) Secure detention.

(2) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided under paragraph (3), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(3) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(4) STATE LICENSURE.—A child shall not be placed with an entity described in section 102(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(5) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary shall promulgate regulations incorporating standards for conditions of detention in placements described in paragraph (1) that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, and abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children in such placements are notified of such standards orally and in writing in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as described in paragraph 23 of the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include, in the annual Country Reports on Human Rights Practices, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Secretary shall consult the Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;

(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) PROCEDURES.—

(1) IN GENERAL.—The Director, in consultation with the Secretary, shall develop procedures to make a prompt determination of the age of an alien, which procedures shall be used—

(A) by the Secretary, with respect to aliens in the custody of the Department;

(B) by the Director, with respect to aliens in the custody of the Office; and

(C) by the Attorney General, with respect to aliens in the custody of the Department of Justice.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of the alien, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Radiographs or the attestation of an alien may not be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to place the burden of proof in determining the age of an alien on the Government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date which is 90 days after the date of the enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

SEC. 201. CHILD ADVOCATES.

(a) ESTABLISHMENT OF CHILD ADVOCATE PROGRAM.—

(1) APPOINTMENT.—The Director may appoint a child advocate, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, if practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a child advocate under this paragraph.

(2) QUALIFICATIONS OF CHILD ADVOCATE.—

(A) IN GENERAL.—A person may not serve as a child advocate unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters;

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children; and

(iii) is not an employee of the Department, the Department of Justice, or the Department of Health and Human Services.

(B) INDEPENDENCE OF CHILD ADVOCATE.—

(i) INDEPENDENCE FROM AGENCIES OF GOVERNMENT.—The child advocate shall act independently of any agency of government in making and reporting findings or making recommendations with respect to the best interests of the child. No agency shall terminate, reprimand, de-fund, intimidate, or retaliate against any person or entity appointed under paragraph (1) because of the findings and recommendations made by such person relating to any child.

(ii) PROHIBITION OF CONFLICT OF INTEREST.—No person shall serve as a child advocate for a child if such person is providing legal services to such child.

(3) DUTIES.—The child advocate of a child shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances—

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or

voluntary departure by sharing with counsel relevant information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner;

(F) report factual findings and recommendations consistent with the child's best interests relating to the custody, detention, and release of the child during the pendency of the proceedings or matters, to the Director and the child's counsel;

(G) in any proceeding involving an alien child in which a complaint has been filed with any appropriate disciplinary authority against an attorney or representative for criminal, unethical, or unprofessional conduct in connection with the representation of the alien child, provide the immigration judge with written recommendations or testimony on any information the child advocate may have regarding the conduct of the attorney; and

(H) in any proceeding involving an alien child in which the safety of the child upon repatriation is at issue, and after the immigration judge has considered and denied all applications for relief other than voluntary departure, provide the immigration judge with written recommendations or testimony on any information the child advocate may have regarding the child's safety upon repatriation.

(4) TERMINATION OF APPOINTMENT.—The child advocate shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs from the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child reaches 18 years of age; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The child advocate—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to accompany and consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING.—

(1) IN GENERAL.—The Director shall provide professional training for all persons serving as child advocates under this section.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions faced by unaccompanied alien children; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a). Any pilot program existing before the date of the enactment of this Act shall be deemed insufficient to satisfy the requirements of this subsection.

(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing child advocates to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the child advocate provisions under this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites at which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN.—Each site selected under subparagraph (A) should have not less than 25 children held in immigration custody at any given time, to the greatest extent possible.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure, to the greatest extent practicable, that all unaccompanied alien children in the custody of the Office or the Department, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the greatest extent practicable, the Director shall—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities in which there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—The Director shall develop the necessary mechanisms to identify and recruit entities that are available to provide legal assistance and representation under this subsection.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Director of the Executive Office for Immigration Review of the Department of Justice, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Director of the Executive Office for Immigration Review shall—

(i) adopt the guidelines developed under subparagraph (A); and

(ii) submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel under this section shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Department;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Department; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due to an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel under this section shall have reasonable access to the unaccompanied alien child, including access while the child is—

(A) held in detention;

(B) in the care of a foster family; or

(C) in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, a child who is represented by counsel may not be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent

to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF CHILD ADVOCATE.—Counsel shall be given an opportunity to review the recommendations of the child advocate affecting or involving a client who is an unaccompanied alien child.

(f) COUNSEL FOR UNACCOMPANIED ALIEN CHILDREN.—Nothing in this Act may be construed to require the Government of the United States to pay for counsel to any unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect on the date which is 180 days after the date of the enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody before, on, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.

(a) J CLASSIFICATION.—

(1) IN GENERAL.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant, who is 18 years of age or younger on the date of application for classification as a special immigrant and present in the United States—

''(i) who, by a court order supported by written findings of fact, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph—

''(I) was declared dependent on a juvenile court located in the United States or has been legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States; and

''(II) should not be reunified with his or her parents due to abuse, neglect, abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined by written findings of fact in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of U.S. Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien.'.

(2) RULE OF CONSTRUCTION.—Nothing in subparagraph (J) of section 101(a)(27) of the Immigration and Nationality Act, as amended by paragraph (1), shall be construed to grant, to any natural parent or prior adoptive parent of any alien provided special immigrant status under such subparagraph, by virtue of such parentage, any right, privilege, or status under such Act.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

'(A) paragraphs (4), (5)(A), (6)(A), (7)(A), 9(B), and 9(C)(i)(I) of section 212(a) shall not apply; and'.

(c) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—A child who has been certified under section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), and who was in the custody of the Office at the time a dependency order was granted for such child, shall be eligible for placement and services under section 412(d) of such Act (8 U.S.C. 1522(d)) until the earlier of—

(A) the date on which the child reaches the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)); or

(B) the date on which the child is placed in a permanent adoptive home.

(2) STATE REIMBURSEMENT.—If foster care funds are expended on behalf of a child who is not described in paragraph (1) and has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act, the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, a child described in section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), may not be denied such special immigrant juvenile classification after the date of the enactment of this Act based on age if the child—

(1) filed an application for special immigrant juvenile classification before the date of the enactment of this Act and was 21 years of age or younger on the date such application was filed; or

(2) was younger than 21 years of age on the date on which the child applied for classification as a special immigrant juvenile and can demonstrate exceptional circumstances warranting relief.

(e) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall promulgate rules to carry out this section.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training materials, and upon request, direct training, to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) CURRICULUM.—The training required under paragraph (1) shall include education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall establish a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(3) VIDEO CONFERENCING.—Direct training requested under paragraph (1) may be conducted through video conferencing.

(b) TRAINING OF DEPARTMENT PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Department who come into contact with unaccompanied alien children. Training for agents of the Border Patrol and immigration inspectors shall include specific training on identifying—

(1) children at the international borders of the United States or at United States ports of entry who have been victimized by smugglers or traffickers; and

(2) children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2)(A).

SEC. 303. REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains, for the most recently concluded fiscal year—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children under this Act;

(3) data regarding the provision of child advocate and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress—

(1) commends the former Immigration and Naturalization Service for its ''Guidelines for Children's Asylum Claims'', issued in December 1998;

(2) encourages and supports the Department to implement such guidelines to facilitate the handling of children's affirmative asylum claims;

(3) commends the Executive Office for Immigration Review of the Department of Justice for its ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children'', issued in September 2004;

(4) encourages and supports the continued implementation of such guidelines by the Executive Office for Immigration Review in its handling of children's asylum claims before immigration judges; and

(5) understands that the guidelines described in paragraph (3)—

(A) do not specifically address the issue of asylum claims; and

(B) address the broader issue of unaccompanied alien children.

(b) TRAINING.—

(1) IMMIGRATION OFFICERS.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers.

(2) IMMIGRATION JUDGES.—The Director of the Executive Office for Immigration Review shall—

(A) provide periodic comprehensive training under the ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children' and the 'Guidelines for Children's Asylum Claims'' to immigration judges and members of the Board of Immigration Appeals; and (B) redistribute the ''Guidelines for Children's Asylum Claims'' to all immigration courts as part of its training of immigration judges.

(3) USE OF VOLUNTARY AGENCIES.—Voluntary agencies shall be allowed to assist in the training described in this subsection.

(c) STATISTICS AND REPORTING.—

(1) STATISTICS.—

(A) DEPARTMENT OF JUSTICE.—The Attorney General shall compile and maintain statistics on the number of cases in immigration court involving unaccompanied alien children, which shall include, with respect to each such child, information about—

(i) the age;

(ii) the gender;

(iii) the country of nationality;

(iv) representation by counsel;

(v) the relief sought; and

(vi) the outcome of such cases.

(B) DEPARTMENT OF HOMELAND SECURITY.—The Secretary shall compile and maintain

statistics on the instances of unaccompanied alien children in the custody of the Department, which shall include, with respect to each such child, information about—

(i) the age;

(ii) the gender;

(iii) the country of nationality; and

(iv) the length of detention.

(2) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act and annually, thereafter, the Attorney General, in consultation with the Secretary, Secretary of Health and Human Services, and any other necessary government official, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary House of Representatives on the number of alien children in Federal custody during the most recently concluded fiscal year. Information contained in the report, with respect to such children, shall be categorized by—

(A) age;

(B) gender;

(C) country of nationality;

(D) length of time in custody;

(E) the department or agency with custody; and

(F) treatment as an unaccompanied alien child.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, categorized by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the following fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended—

(1) by striking ''and'' after ''countries,''; and

(2) by inserting '', and instruction on the needs of unaccompanied refugee children'' before the period at the end.

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Department, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended—

(1) in subsection (a)(2), by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child.''; and

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

''(C) INITIAL JURISDICTION.—United States Citizenship and Immigration Services shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.''.

TITLE V—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 501. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL AUTHORITY OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director may—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2007; and

''(B) compel compliance with the terms and conditions set forth in section 103 of such Act, by—

''(i) declaring providers to be in breach and seek damages for noncompliance;

''(ii) terminating the contracts of providers that are not in compliance with such conditions; or

''(iii) reassigning any unaccompanied alien child to a similar facility that is in compliance with such section.''.

SEC. 502. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 501, is further amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and (2) by adding at the end the following: ''(5) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

SEC. 503. EFFECTIVE DATE.

The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

TITLE VI—AUTHORIZATION OF APPROPRIATIONS

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and (2) the provisions of this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

TITLE IX—STUDY OF WARTIME TREATMENT OF CERTAIN PEOPLE

SEC. 901. SHORT TITLE.

This title may be cited as the ''Wartime Treatment Study Act''.

SEC. 902. FINDINGS.

Congress makes the following findings:

(1) During World War II, the United States Government deemed as ''enemy aliens'' more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families and required them to carry Certificates of Identification and limited their travel and personal property rights. At that time, these groups were the 2 largest foreign-born groups in the United States.

(2) During World War II, the United States Government arrested, interned, or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including American-born children, to European Axis nations, many to be exchanged for Americans held in those nations.

(3) Pursuant to a policy coordinated by the United States with Latin American nations, many European Latin Americans, including German and Austrian Jews, were arrested, brought to the United States, and interned. Many were later expatriated, repatriated, or deported to European Axis nations during World War II, many to be exchanged for Americans and Latin Americans held in those nations.

(4) Millions of European Americans served in the armed forces and thousands sacrificed their lives in defense of the United States.

(5) The wartime policies of the United States Government were devastating to the Italian American and German American communities, individuals, and their families. The detrimental effects are still being experienced.

(6) Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution or genocide and sought safety in the United States. During the 1930s and 1940s, the quota system, immigration regulations, visa requirements, and the time required to process visa applications affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(7) The United States Government should conduct an independent review to fully assess and acknowledge these actions. Congress has previously reviewed the United States Government's wartime treatment of Japanese Americans through the Commission on Wartime Relocation and Internment of Civilians. An independent review of the treatment of German Americans and Italian Americans and of Jewish refugees fleeing persecution and genocide has not yet been undertaken.

(8) Time is of the essence for the establishment of commissions, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

SEC. 903. DEFINITIONS.

In this title:

(1) DURING WORLD WAR II.—the term ''during World War II'' refers to the period between September 1, 1939, through December 31, 1948.

(2) EUROPEAN AMERICANS.—

(A) IN GENERAL.—The term ''European Americans'' refers to United States citizens and resident aliens of European ancestry, including Italian Americans, German Americans, Hungarian Americans, Romanian Americans, and Bulgarian Americans.

(B) ITALIAN AMERICANS.—The term ''Italian Americans'' refers to United States citizens and resident aliens of Italian ancestry.

(C) GERMAN AMERICANS.—The term ''German Americans'' refers to United States citizens and resident aliens of German ancestry.

(3) EUROPEAN LATIN AMERICANS.—The term ''European Latin Americans'' refers to persons of European ancestry, including Italian or German ancestry, residing in a Latin American nation during World War II.

(4) LATIN AMERICAN NATION.—The term ''Latin American nation'' refers to any nation in Central America, South America, or the Carribean.

SUBTITLE A—COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS

SEC. 911. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of European Americans (referred to in this subtitle as the ''European American Commission'').

(b) MEMBERSHIP.—The European American Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the European American Commission. A vacancy in the European American Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The European American Commission shall include 2 members representing the interests of Italian Americans and 2 members representing the interests of German Americans.

(e) MEETINGS.—The President shall call the first meeting of the European American Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the European American Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The European American Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the European American Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the European American Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the European American Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 912. DUTIES OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—It shall be the duty of the European American Commission to review the United States Government's wartime treatment of European Americans and European Latin Americans as provided in subsection (b).

(b) SCOPE OF REVIEW.—The European American Commission's review shall include the following:

(1) A comprehensive review of the facts and circumstances surrounding United States Government actions during World War II with respect to European Americans and European Latin Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to such law, proclamations, or executive orders respecting the registration, arrest, exclusion, internment, exchange, or deportation of European Americans and European Latin Americans. This review shall include an assessment of the underlying rationale of the United States Government's decision to develop related programs and policies, the information the United States Government received or acquired suggesting the related programs and policies were necessary, the perceived benefit of enacting such programs and policies, and the immediate and long-term impact of such programs and policies on European Americans and European Latin Americans and their communities.

(2) A comprehensive review of United States Government action during World War II with respect to European Americans and European Latin Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to such law, proclamations, or executive orders, including registration requirements, travel and property restrictions, establishment of restricted areas, raids, arrests, internment, exclusion, policies relating to the families and property that excludees and internees were forced to abandon, internee employment by American companies (including a list of such companies and the terms and type of employment), exchange, repatriation, and deportation, and the immediate and long-term effect of such actions, particularly internment, on the lives of those affected. This review shall include a list of—

(A) all temporary detention and long-term internment facilities in the United States and Latin American nations that were used to detain or intern European Americans and European Latin Americans during World War II (in this paragraph referred to as 'World War II detention facilities');

(B) the names of European Americans and European Latin Americans who died while in World War II detention facilities and where they were buried;

(C) the names of children of European Americans and European Latin Americans who were born in World War II detention facilities and where they were born; and

(D) the nations from which European Latin Americans were brought to the United States, the ships that transported them to the United States and their departure and disembarkation ports, the locations where European Americans and European Latin Americans were exchanged for persons held in European Axis nations, and the ships that transported them to Europe and their departure and disembarkation ports.

(3) A brief review of the participation by European Americans in the United States Armed Forces including the participation of European Americans whose families were excluded, interned, repatriated, or exchanged.

(4) A recommendation of appropriate remedies, including how civil liberties can be protected during war, or an actual, attempted, or threatened invasion or incursion, an assessment of the continued viability of the Alien Enemies Acts (50 U.S.C. 21 et seq.), and public education programs related to the United States Government's wartime treatment of European Americans and European Latin Americans during World War II.

(c) FIELD HEARINGS.—The European American Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The European American Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section —011(e).

SEC. 913. POWERS OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENEREAL.—The European American Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The European American Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The European American Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the European American Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the European American Commission and furnish all information requested by the European American Commission to the extent permitted by law, including information collected under the Commission on Wartime and Internment of Civilians Act (Public Law 96–317; 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans Civil Liberties Act (Public Law 106–451; 50 U.S.C. App. 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the 'Privacy Act of 1974'), the European American Commission shall be deemed to be a committee of jurisdiction.

SEC. 914. ADMINISTRATIVE PROVISIONS.

The European American Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions,

and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 915. FUNDING.

Of the amounts authorized to be appropriated to the Department of Justice, $600,000 shall be available to carry out this subtitle.

SEC. 916. SUNSET.

The European American Commission shall terminate 60 days after it submits its report to Congress.

SUBTITLE B—COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES

SEC. 921. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of Jewish Refugees (referred to in this subtitle as the 'Jewish Refugee Commission').

(b) MEMBERSHIP.—The Jewish Refugee Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the Jewish Refugee Commission. A vacancy in the Jewish Refugee Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The Jewish Refugee Commission shall include 2 members representing the interests of Jewish refugees.

(e) MEETINGS.—The President shall call the first meeting of the Jewish Refugee Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the Jewish Refugee Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The Jewish Refugee Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Jewish Refugee Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the Jewish Refugee Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Jewish Refugee Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 922. DUTIES OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—It shall be the duty of the Jewish Refugee Commission to review the United States Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the United States as provided in subsection (b).

(b) SCOPE OF REVIEW.—The Jewish Refugee Commission's review shall cover the period between January 1, 1933, through December 31, 1945, and shall include, to the greatest extent practicable, the following:

(1) A review of the United States Government's decision to deny Jewish and other refugees fleeing persecution or genocide entry to the United States, including a review of the underlying rationale of the United States Government's decision to refuse the Jewish and other refugees entry, the information the United States Government received or acquired suggesting such refusal was necessary, the perceived benefit of such refusal, and the impact of such refusal on the refugees.

(2) A review of Federal refugee law and policy relating to those fleeing persecution or genocide, including recommendations for making it easier in the future for victims of persecution or genocide to obtain refuge in the United States.

(c) FIELD HEARINGS.—Jewish Refugee Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—Jewish Refugee Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section X021(e).

SEC. 923. POWERS OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—The Jewish Refugee Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Jewish Refugee Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The Jewish Refugee Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the Jewish Refugee Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Jewish Refugee Commission and furnish all information requested by the Jewish Refugee Commission to the extent permitted by law, including information collected as a result of the Commission on Wartime and Internment of Civilians Act (Public Law 96–317; 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans Civil Liberties Act (Public Law 106–451; 50 U.S.C. App. 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the 'Privacy Act of 1974'), the Jewish Refugee Commission shall be deemed to be a committee of jurisdiction.

SEC. 924. ADMINISTRATIVE PROVISIONS.

The Jewish Refugee Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 925. FUNDING.

Of the amounts authorized to be appropriated to the Department of Justice, $600,000 shall be available to carry out this subtitle.

SEC. 926. SUNSET.

The Jewish Refugee Commission shall terminate 60 days after it submits its report to Congress.

SMALL BUSINESS TAX RELIEF ACT OF 2007—MOTION TO PROCEED

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Madam President, I want to take this opportunity to say a few words about health care in general and about the needs of our children in particular. Let me preface my remarks by saying that I think it is clear to most Americans that our health care system today is disintegrating, and that we unfortunately and tragically remain the only country in the industrialized world that does not guarantee health care to all of its people as a right of citizenship.

Now, I hear a whole lot of talk in the Senate—I heard it in the House—about health care. But, up front, we should be aware that there is something fundamentally wrong in terms of the way we do business that 46 million Americans have zero health insurance, that the cost of health care is soaring every single year, and that tens of millions of Americans who do have health insurance have very weak insurance programs and are underinsured.

On top of all of that, with 46 million uninsured, tens of millions underinsured, we continue to pay by far the highest prices in the world for our prescription drugs. In other words, we have a problem, and the time is long overdue for the Senate to stand up to the insurance companies and the drug companies and start representing the American people.

In my view, the solution is moving us toward a national health care program which provides health care to every man, woman, and child as a right of citizenship.

When people say, well, something like that will be very expensive. Well, not really. What we have now is clearly the most inefficient and wasteful nonsystem in the world by which we are spending twice as much per capita for health care as any other major country.

So people say: Well, gee, the Canadian system is not perfect; The British system is not perfect; The Danish system is not perfect. True enough. Neither is our system. And we spend twice as much per person on health care as does any other system.

Tonight, and in the coming few days, we are going to be focusing on the needs of our children. In the midst of a nation with 46 million uninsured, we have over 9 million children, one in nine, who are also uninsured. Every 46 seconds another baby is born uninsured in the United States.

I have heard a lot through my career in the U.S. Congress about family values. So let me be very clear and suggest that it is not a family value to live in a country in which 9 million children have no health insurance at all.

Uninsured children are almost 12 times as likely as insured children to have an untreated medical need, are four times as likely as insured children to have an unmet dental need.

The statistics go on. An estimated two-thirds of children and adolescents with mental health needs are not getting the care they need. Only one in five children with serious emotional disturbances receives specialized treatment. Given this sorry state of affairs, I find it ironic that we are having any debate about increasing health care coverage for children under the CHIP program. It seems to me that the very least this Nation should be doing is providing health insurance to every child in America—something, by the way, this bill does not do.

If this bill, in its current form, were to pass tomorrow, it would provide health insurance to approximately one-third of the children who are uninsured—one-third. In my opinion, as we move toward a national health care program guaranteeing health care to every man, woman, and child, the very least we should be doing is making sure all of our children are covered. That is why I have recently introduced S. 1564, the All Healthy Children Act of 2007.

This bill, in fact, would provide the opportunity for every child in America to have health care coverage. In addition, since insurance coverage alone does not guarantee access—in other words, you can have health insurance, but you cannot necessarily find a doctor or a dentist who will treat you—we must also make certain there is an adequate supply of health professionals and conveniently located sites of care.

Along with Senator MURKOWSKI, I have also introduced S. 941, the Community Health Centers Investment Act, to significantly expand the number of community-based, federally qualified centers, a proven cost-effective system of primary health care that is governed by the people who use it. These health care democracies serve all regardless of ability to pay and insurance status.

The issue we are dealing with in terms of health care is not only providing health insurance but making sure there are doctors and clinics and hospitals available to treat the people who need the help. One of the crises, of the many we are facing as a nation in terms of health care, is, believe it or not, we are not producing the doctors we need for today, especially in rural areas and primarily in primary health care. We are not producing the dentists we need. We are not producing the nurses we need. As our Nation becomes older, those problems will only become more severe.

In that regard, I have done what I could and will continue to move forward to significantly increase the funding for the National Health Service Corps, to provide scholarships and loan repayment to those choosing primary care specialties and agreeing to practice in underserved areas. I am happy we are on a path to increase funding for community health centers, but clearly we have a long way to go in order to fund the national health service.

While the debate on these initiatives awaits another day, we must pass a CHIP bill that matches the House bill in funding level. Accordingly, I will be cosponsoring the Kerry amendment to provide SCHIP with a $50 billion increased authorization over the next 5 years. At a minimum, though, I certainly hope the Senate passes the bill approved by the Senate Finance Committee.

I know some of the objections raised about expanding health care coverage for children come from people who think spending the amount of money proposed in this legislation is too much. I mention to those Members who, in many cases—certainly including the President of the United States—are supporting the repeal of the inheritance tax, the estate tax, to tell them that with the full repeal of the estate tax, one of the wealthiest families in America would receive in tax breaks almost as much money as we are attempting to spend right now to provide health care for over 3 million American children. So on the one hand, there are people—the President of the United States, among others—who say we have to repeal the inheritance tax, all of which benefits now will go to the wealthiest three-tenths of 1 percent. One family getting $32 billion, that is a good idea. But to provide $35 billion to provide health care for over 3 million American children, that is a bad idea. I think those priorities are a little bit backwards.

Let me conclude by saying all of us are very proud to be Americans. We want this country to be No. 1 in many respects. It should not give any of us pride to know that in every other major country on Earth virtually all of the people have health insurance as a right, have lower cost prescription drugs than we do. The idea that today and tomorrow we will be debating whether we can afford to provide another 3 million children with health insurance suggests to me we have a long way to go in this debate. We should not only provide health insurance to 3 million children, we should provide health insurance to the over 9 million children who are without health insurance. We should provide health insurance not just to 9 million uninsured children but to 46 million uninsured Americans.

In my view, health care is a right, not a privilege. The idea that there are people today who are scared to death about what happens when they or their children become ill because of the high cost of health insurance is something that should not take place in this country. This bill is a small but important step forward.

At the end of the day, we have to join the rest of the industrialized world and make sure all of our people, regardless of income, have high quality health care.

MORNING BUSINESS

Mr. SANDERS. I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF LESLIE SOUTHWICK

Mr. HATCH. Madam President, I rise in strong support of Judge Leslie Southwick's nomination to the United States Court of Appeals for the Fifth Circuit.

The evaluations, hearings, and investigations are complete.

The American Bar Association's highest rating is in.

It is time for this body, the United States Senate, to decide whether to consent to this judicial nomination by voting up or down. That is our role and we should assert it rather than avoid it.

Vote yes or vote no, but it is time for this body to do its duty and vote on the Southwick nomination.

This Senator will proudly vote to confirm this excellent nominee.

Before looking specifically at the Southwick nomination, I must respond to some recent remarks made by my Democratic colleagues concerning the confirmation process.

Three of their claims require a response.

First, Democrats have said that the three appeals court nominees confirmed so far this year are ''three more than were confirmed in this similar year in the last Clinton term.''

That is a factual claim and it is either true or false.

An evaluation of this claim is simple:

We are in the third year of President Bush's second term and the Senate is controlled by the other party.

The third year of President Clinton's second term was 1999, when the Senate also was controlled by the other party.

Democrats, therefore, are claiming that the Senate confirmed no appeals court nominees in 1999.

That allegation is patently false.

In fact, and this is obviously a matter of public record, the Senate confirmed seven appeals court nominees in 1999, more than twice as many as the Senate has confirmed so far this year.

Now, to give my Democratic colleagues the benefit of the doubt, perhaps they intended to refer to a different year during the last Clinton term.

If so, the evaluation is the same with the same conclusion that their claim is patently false.

The Senate confirmed seven appeals court nominees in 1997, 13 in 1998, seven in 1999, and eight in 2000, a presidential election year.

That is an average of nine per year and seventeen per Congress.

It was my Democratic colleagues who used appeals court confirmations in President Clinton's second term as a benchmark for appeals court confirmations in President Bush's second term.

By my Democratic colleagues' own standard, they will have to pick up the appeals court confirmation pace to match what Republicans did during President Clinton's second term.

The second thing Democrats have claimed is that the judicial vacancy rate is at an all-time low.

Once again, that claim is false.

The judicial vacancy rate has been increasing each year since before President Bush's re-election.

Average vacancies this year are 35 percent higher than in 2004, and average district court vacancies are 62 percent higher.

I do not know where my colleagues get their information, but the judicial vacancy rate is on the way up, not at an all-time low.

The third Democratic claim is that the Republican-controlled Judiciary Committee did not give hearings to 70 of President Clinton's judicial nominees. This, they say, was a sign of great disrespect.

This is the judicial confirmation equivalent of an urban legend but, like other urban legends, constant repetition does not make it any more true.

We may be entitled to our own opinions, but we are not entitled to our own set of facts.

Not only does this claim, right off the bat, overstate the total by more than 20 percent but, more importantly, it ignores the fact that some judicial nominees do not receive hearings for a variety of perfectly legitimate and obvious reasons.

My Democratic colleagues, of course, know this but also know that most Americans will not know the difference and many in the media will not bother to sort it out.

President Clinton, for example, withdrew a dozen of his own nominees for various reasons, some involving significant and even embarrassing controversy. Was it disrespectful not to hold a hearing on nominees the President had withdrawn?

President Clinton submitted other nominees too late in a Congressional session to permit proper evaluation. Was it a sign of great disrespect not to give a hearing to a nominee not yet ready for a hearing?

Other nominees did not receive hearings because they were opposed by their home-State Senators, a tradition of Senatorial courtesy dating well back into the last century. Are my Democratic colleagues arguing that respecting the wishes of home-State Senators, including some of them, was being disrespectful to the nominees?

There are even more reasons, but eliminating these three alone—Presidential withdrawals, late nominations, and home-State Senator opposition—raises the Democratic margin of error to more than 100 percent.

The Southwick nomination has none of the problems I just mentioned that prevented confirmation of some Clinton judicial nominees.

President Bush has obviously not withdrawn the nomination. He submitted this nomination on January 9, 2007, when the current 110th Congress convened, so there has been more than enough time for evaluation and confirmation.

In fact, last year the Judiciary Committee thoroughly vetted Judge Southwick when he was initially nominated to the U.S. District Court.

We looked at the same man with the same character, the same qualifications, and the same record. And we sent the nomination to the full Senate without any opposition, including from any of my Democratic colleagues who today are suddenly raising such a ruckus.

To be fair, in the name of full disclosure, I must candidly admit that two important things have changed since last fall, when the Judiciary Committee unanimously approved Judge Southwick's nomination.

First, Judge Southwick has been nominated to the appeals court rather than to the district court.

Second, the American Bar Association has rated Judge Southwick higher for his appointment to the appeals court than they did for his appointment to the district court.

It makes no sense to me, but I suppose someone somewhere might think that a higher rating justifies more opposition.

The higher rating means Judge Southwick gets even higher marks from the ABA for his compassion, open-mindedness, freedom from bias, and commitment to equal justice.

If someone can explain how that makes him less qualified for the Federal bench, I would like to hear it.

Unlike Clinton nominees who did not receive hearings, Judge Southwick has the strong support of both of his home-State Senators.

The Senators from Mississippi, Senators COCHRAN and LOTT, are senior and highly respected members of this body. Their support ought to mean something.

I have no doubt that if these two fine Senators objected to Judge Southwick receiving a hearing or an up or down vote, the Democrats who run this body would give them the respect they deserve and there would be no vote.

It seems, however, that today this traditional courtesy to esteemed home-State Senators is on its way to becoming a one-way street.

Both Mississippi Senators have been working with President Bush to fill this same seat for more than 5 years, and I think they deserve our respect and support just like we would seek theirs if the situation were reversed.

In the last few years of the Clinton administration, a Republican Senate confirmed a string of highly controversial appeals court nominees who nonetheless had the backing of their home-State Senators.

I supported them and today I urge my colleagues to do the same for our colleagues from Mississippi and for Judge Southwick.

When I came before this body a month ago, I explained why the tactics being used against Judge Southwick and other judicial nominees are illegitimate.

It is illegitimate to focus only on a few of the thousands of decisions in which Judge Southwick participated while on the Mississippi Court of Appeals.

It is illegitimate to ignore the facts and the law of those few cases.

It is illegitimate to ignore the standard of review that Judge Southwick had to follow as an appeals court judge.

It is illegitimate to look only at the political interests served by the results of those few cases.

It is illegitimate to create a distorted, twisted caricature of this nominee, a caricature that is simply unrecognizable by those who know him best and have worked with him most.

These are some of the illegitimate tactics being used against this fine nominee. I have a hard time believing that any of my colleagues would endorse these tactics or, worse yet, be persuaded by them.

As I said, the entire case against this highly qualified nominee rests on just two of the 7,000 cases in which he participated, each involving an opinion which he did not write.

If saying that is not enough to reject this empty case against Judge Southwick's confirmation, I fear for the confirmation process and this body's role in judicial appointments.

But let me take a minute and look at these two lone decisions that supposedly justify this tirade, this assault, this hatchet job against Judge Southwick.

The first is titled Richmond v. Mississippi Department of Human Resources.

Last week, one of my Democratic colleagues said that this one lone decision creates a perception that Judge

Southwick will be not be fair in civil rights cases as well as in cases about what he called the rights of ordinary people.

I agree with the distinguished Judiciary Committee Ranking Minority Member, Senator SPECTER, who has said that this body should evaluate judicial nominees based on facts, not perceptions.

Perceptions, after all, can be created with one press release, sound bite, letter, interview, or floor speech. If all it takes to justify opposition is such a deliberately invented perception, a politically motivated innuendo is all it would takes to defeat a nominee and destroy a good man's reputation.

That is wrong, and is another sign that this judicial confirmation process is steadily degrading.

In the Richmond case, a State employee used a racial slur one time. The person to whom it was directed did not hear it and later accepted an offered apology. The State review board concluded that these circumstances did not require terminating the employee.

To hear the critics describe it, the issue on review before the Mississippi Court of Appeals was whether racial slurs are good or bad, whether racial slurs ought to be tolerated in the workplace.

To hear the critics describe it, the appeals court looked at this case from scratch, had all options open, and could have done anything it wanted.

The critics know that is not true, but they also know that most people will not know the difference.

Apparently, the political or partisan goal of attacking Judge Southwick justifies misleading people about what judges do in general, and about this case in particular.

The Mississippi Court of Appeals, on which Judge Southwick sat, was limited to reviewing this decision under a specific, narrow standard called the arbitrary and capricious standard.

The appeals court was required to affirm the review board's decision if there was any evidence to support it. That is a very deferential standard, and a judge's personal opinion is not enough to overcome it.

On appeal, the Mississippi Supreme Court agreed with Judge Southwick's court that the facts of this case did not require that the employee be terminated.

Let me make this very clear.

Judge Southwick's critics are not addressing what the court actually did in this case. They are attacking Judge Southwick because his court did not reach a decision it had no authority to reach. No matter what your personal feelings about the issue in the case, that is the wrong standard.

It is wrong to suggest that judges are not fair to parties simply because they rule against them.

It is wrong to suggest that judges should prefer politically correct results over legally correct results.

Judges do not exist to opine on social problems or address social trends, they exist to decide legal cases.

Judges do not exist to serve political interests or pursue policy agendas, they exist to settle legal disputes.

Judge Southwick apparently understands this much better than his critics. Properly understanding that judges must follow the law rather than their personal opinions is precisely why Judge Southwick should be confirmed.

Some have said that this decision shows Judge Southwick has hostile views on race.

It does not show his views on that issue one way or another.

But if any question remained about Judge Southwick's personal views, in his confirmation hearing before the Judiciary Committee—a more appropriate setting in which to do it—Judge Southwick made his views perfectly clear. He said that this particular slur is always offensive and inherently derogatory.

If some of my colleagues believe judges should ignore the law and decide cases based on personal views, they should say so.

If some of my colleagues believe judges should decide which side is going to win before a case even starts, they should say so.

If some of my colleagues really believe that litigants will get a fairer shake before judges who decide cases by personal opinions rather than the law, they should explain such a wrong-headed idea.

America's founders did not believe that, I do not believe that, and I think most Americans do not believe that.

The other case with which Judge Southwick's critics would indict him is titled S.B. v. L.W.

In this custody case, all of the relevant factors such as employment, income, home ownership, and community roots, weighted in favor of the father.

State statutes and State judicial precedents at the time also favored the heterosexual father over the bisexual mother.

The court's job was to review these factors, and the court upheld the decision to give custody to the father. That is what the law required, so that is what the court did.

So what is it about this decision that Judge Southwick's critics offer as the basis to oppose him? That an opinion he joined but did not write used the phrase ''homosexual lifestyle.''

I can accept that some people see this as a negative phrase.

But others might see it simply as a factual phrase.

The Mississippi Supreme Court used this phrase in the line of cases that Judge Southwick's court had to follow in its decision.

The phrase has been used in hundreds of court decisions, on both the State and federal level, all across this country. This includes the Supreme Court's decision in Lawrence v. Texas, which Judge Southwick's critics no doubt would applaud.

It is hardly a stretch to see that this phrase is relevant in a custody case where applicable law makes lifestyle patterns and home life decisions important.

This, I say to my colleagues, is the case against Judge Southwick: two decisions, two opinions he did not write, with results some people do not like but which followed applicable law and stuck to the job the appeals court had to do.

That so-called case against Judge Southwick is less than unpersuasive, it is no case at all.

Before I close, I want to repeat a point I made the last time I addressed this body about this excellent nominee.

In their letter opposing Judge Southwick, the Congressional Black Caucus said that we ''should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled.''

That is the standard the Congressional Black Caucus recommends that we apply to this nomination.

Judge Southwick authored 927 opinions and concurrences while on the Mississippi Court of Appeals.

Only 21 of those 927 opinions and concurrences, or just 2.3 percent, have been either reversed or even criticized by the Mississippi Supreme Court in 12 years.

As the Congressional Black Caucus said I should be, I am indeed impressed by the frequency with which Judge Southwick's opinions and concurrences have been overruled. A reversal rate so low is a sign that he is a balanced jurist whose work is highly respected and holds up under scrutiny.

This is yet another reason why this excellent nominee should be confirmed.

Mr. President, the majority of Americans who disapprove of our job performance has been growing all year, from 56 percent in March and April to nearly 65 percent today.

A record low of 14 percent of Americans have confidence in Congress.

Perhaps, just perhaps, illegitimate tactics and unfair treatment of good people and outstanding nominees such as Judge Southwick contribute to this dismal picture.

I hope that changes, not only for the nominees but also for the vitality and integrity of this institution.

The Southwick nomination is ready for the Senate to decide whether to give its consent by voting up or down.

The background checks are done.

The ABA's highest rating is in.

The questionnaire is complete.

The hearings have been conducted.

The distinguished home-State Senators have given this nominee their strongest endorsement.

None of the factors that stopped, held up, or slowed down past nominees exist in this case.

There are no reasons or excuses for further delay.

The Judiciary Committee and the full Senate should promptly approve this excellent nominee.

I yield the floor.

CHANGES TO S. CON. RES. 21

Mr. CONRAD. Madam President, section 301 of S. Con. Res. 21, the 2008 budget resolution, permits the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels for legislation that reauthorizes the State Children's Health Insurance Program, SCHIP. Section 301 authorizes the revisions provided that certain conditions are met, including that the legislation not result in more than $50 billion in outlays over the period of fiscal years 2007 through 2012 and that the legislation not worsen the deficit over the period of fiscal years 2007 through 2012 or the period of fiscal years 2007 through 2017.

I find that S. 1893, which was reported to the Senate on July 27, 2007, and will be offered as a complete substitute to H.R. 976, satisfies the conditions of the deficit-neutral reserve fund for SCHIP legislation. Therefore, pursuant to section 301, I am adjusting the aggregates in the 2008 budget resolution, as well as the allocation provided to the Senate Finance Committee.

I ask unanimous consent to have the following revisions to S. Con. Res. 21 printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2008—S. CON. RES. 21; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301 DEFICIT-NEUTRAL RESERVE FUND FOR SCHIP LEGISLATION

[In billions of dollars]

SECTION 101	
(1)(A) Federal Revenues:	
FY 2007	1,900.340
FY 2008	2,022.084
FY 2009	2,121.502
FY 2010	2,176.951
FY 2011	2,357.680
FY 2012	2,494.753
(1)(B) Change in Federal Revenues:	
FY 2007	−4.366
FY 2008	−28.712
FY 2009	14.576
FY 2010	13.230
FY 2011	−36.870
FY 2012	−102.343
(2) New Budget Authority:	
FY 2007	2,376.360
FY 2008	2,503.290
FY 2009	2,524.710
FY 2010	2,577.981
FY 2011	2,695.425
FY 2012	2,732.230
(3) Budget Outlays:	
FY 2007	2,299.752
FY 2008	2,470.369
FY 2009	2,570.622
FY 2010	2,607.048
FY 2011	2,701.083
FY 2012	2,713.960

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[In millions of dollars]

Current Allocation to Senate Finance Committee:	
FY 2007 Budget Authority	1,011,527
FY 2007 Outlays	1,017,808
FY 2008 Budget Authority	1,078,905
FY 2008 Outlays	1,079,914
FY 2008–2012 Budget Authority	6,017,379
FY 2008–2012 Outlays	6,021,710
Adjustments:	
FY 2007 Budget Authority	0
FY 2007 Outlays	0
FY 2008 Budget Authority	7,237
FY 2008 Outlays	2,055
FY 2008–2012 Budget Authority	47,405
FY 2008–2012 Outlays	35,191
Revised Allocation to Senate Finance Committee:	
FY 2007 Budget Authority	1,011,527
FY 2007 Outlays	1,017,808
FY 2008 Budget Authority	1,086,142
FY 2008 Outlays	1,081,969
FY 2008–2012 Budget Authority	6,064.784
FY 2008–2012 Outlays	6,056,901

HOMELAND SECURITY APPROPRIATIONS

Mr. BAUCUS. Madam President, last week when the Senate considered the Homeland Security Appropriations Bill, I offered an amendment, numbered 2406, with my good friend and partner from Montana, JON TESTER. Our amendment would bar funds appropriated in the Homeland Security appropriations bill from being used to establish a national ID card.

Benjamin Franklin once said, ''They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.''

Generations of Americans have fought for both our liberty and safety.

America's Founders sought the freedom to lead their lives as they chose—freedom of religion, speech, and assembly. Freedom, above all other motives, led them to cross the ocean find a new home in America.

Whether defending our liberty from British colonial governors, Nazi aggression, or today's Islamic radicals, Americans have never tired in their effort to stand up in defense of our liberty.

But sometimes the threat to liberty is not as obvious as a red-coated army or a German panzer division. Sometimes, the threat is much harder to see but just as dangerous.

The threat I speak of today is a national ID card.

A national ID card may sound harmless to some. Indeed, a number of politicians have called for giving every citizen a national ID card. They argue that a national identification card would make it harder for terrorists to use fake identification to enter the country.

But a national ID card has the potential to be abused. Such a card could become a system of identity papers, databases, status and identity checks, and Federal surveillance used to track and control individuals' movements and activities. It could, in effect, create an internal U.S. passport.

Some have argued that a national ID is essential to protecting Americans from terrorism. I strongly disagree.

In response to the 9/11 Commission's recommendations, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004. This act provided a number of improvements to our Nation's driver's licenses.

I support these reasonable efforts to secure our State driver's licenses from terrorists. However, a national ID card would just give Government bureaucrats another chance to meddle in the private lives of regular law-abiding Americans.

Just to get on a plane, go in a Federal building, or drive down the road, you would have to have the permission of some bureaucrat in Washington.

If a national ID card were established, we would be right back here on the Senate floor debating whether citizens would be required to carry them at all times or pondering what citizens are allowed to do without a national ID card.

A National ID card would be a terrible loss of freedom in this country.

Foreign countries with the worst civil liberties records in the world require their citizens to carry a national ID at all times. They have legal punishments for people caught without their IDs.

Take Zimbabwe, for example. They passed a law in November which required all citizens to carry a national ID. Citizens face a fine or imprisonment if they refuse to carry the ID.

History has taught us that national ID cards can lead to dangerous and destructive government policies. National ID cards played important roles in the genocides of both Nazi Germany and Rwanda.

The apartheid-era Government of South Africa used national identification documents as internal passports to oppress the country's native population.

Clearly, a national ID would be wrong for the United States. I am proud to say my home State of Montana would be the first to reject any effort to impose this sort of system.

Montana's leadership has spoken, and I have heard them loud and clear; get the Federal Government out of the business of telling the States how to produce driver's licenses and ID cards.

My friend, Montana's Governor Brian Schweitzer, signed a law in April that bans Montana's Department of Motor Vehicles from enforcing the requirements of the Real ID act. Republicans and Democrats alike in Montana's Legislature have voted unanimously to reject Real ID. I am proud of Montana's vigilant stand against the Federal Government's encroachment.

It is wrong for politicians in Washington to burden State authorities with excessive regulations. We must allow our States to take initiatives as well. We should never try to micromanage them. They know how to do their job.

Mr. President this is not a partisan issue. Organizations from the left, the ACLU, join hands with groups from the right, the NRA, and raise serious concerns about the establishment of a national ID card.

I urge my colleagues to join the chorus of Americans and support this amendment.

Mr. SPECTER. Mr. President, I wish to amplify my brief earlier statement regarding my vote against the DeMint amendment No. 2481 to the fiscal year 2008 Homeland Security Appropriations Act.

On February 28, 2007, during Senate consideration of the Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007, there were two side-by-side votes on amendments related to criminal offenses which disqualify an applicant from receiving a transportation worker identification credential.

The first vote was on an amendment offered by Senator INOUYE. This amendment, amendment No. 285, specified certain criminal offenses which would disqualify an applicant from receiving the transportation worker identification credential but gave the U.S. Secretary of Homeland Security the authority to add to or modify the listed offenses in a rulemaking. I voted in favor of this amendment because I believe the Secretary ought to have the authority to modify the existing list of crimes when circumstances warrant a regulatory change, and the amendment was adopted by a vote of 58 to 37.

The second vote was on an amendment offered by Senator DEMINT. This amendment, amendment No. 279, was identical to the previous amendment offered by Senator INOUYE aside from its omission of Secretarial authority to modify the list of existing offenses. Since these amendments were in direct contradiction with one another over the issue of granting the Secretary authority to modify the existing list, I voted against the DeMint amendment. Nevertheless, it was adopted by a vote of 94 to 2, with 56 Senators voting to contradict the position they had taken on the previous amendment.

Therefore, when the question came up on the DeMint amendment No. 2481 to the fiscal year 2008 Homeland Security Appropriations bill, which would have prohibited funds provided in the act from being expended by the Secretary to remove offenses from the list of criminal offenses disqualifying individuals from receiving a transportation worker identification credential, I voted against it, not only because I believe it is sound public policy to require flexibility on such matters but also because it was consistent with my position on the Inouye amendment to the Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007. The DeMint amendment No. 2481 was adopted by a vote of 93 to 1 even though it was again in direct contradiction to the position taken by the Senate when it adopted the Inouye amendment to the Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007.

Mr. FEINGOLD. Madam President, I was pleased to support the fiscal year 2008 Homeland Security appropriations bill. Our national security strategy needs to adapt in order to meet new and emerging threats while ensuring those in charge of protecting us have the resources they need. I am pleased to support the current Homeland Security appropriations bill which includes many important measures to keep our communities safe.

The Senate unanimously accepted my amendment to improve the Safe Skies program that I established a few years ago. The amendment will encourage the Transportation Security Administration and the airlines to better implement legislation I authored that allows first responders to volunteer to help flight crews in the event of an onboard emergency.

The bill would increase funding for State fire fighter and emergency management grants. Along with a bipartisan coalition of Senators, I wrote to Senate appropriators earlier in the year asking that they increase funding for these important grants. The appropriators agreed with our recommendations and recommended $700,000,000 for fire fighter grants and $300,000,000 for emergency management performance grants. These funds will help State and local agencies obtain the equipment and training they need to protect us against terrorist incidents and natural disasters.

I was disappointed that an amendment I cosponsored to fund decontamination units for the National Guard's Weapons of Mass Destruction Civil Support Teams, WMD–CST, did not receive a vote. As a result of legislation I authored, every State in this Nation now has a functional WMD–CST. The Department of Defense recently announced that it will soon finalize the certifications of all of these teams. I will continue to work to ensure that the National Guard receives the funds it needs to perform its homeland security operations.

The bill would appropriate the funds needed to hire 3,000 additional border patrol agents. This important provision will help us secure our borders and restore credibility to our immigration system. While I was deeply disappointed that the Senate was unable to reach a bipartisan compromise to implement comprehensive immigration reform, I am pleased that the bill will help improve our border security. I also supported an amendment offered by Senator GRAHAM to appropriate an additional $3 billion for additional border agents, infrastructure and technology. I was concerned that the amendment was not offset and that it authorized building 700 miles of fencing, which has not been demonstrated to be a realistic or cost-effective method of securing the border. However, I supported the amendment because the personnel, infrastructure, and technology provisions represent important steps toward border security, which is one of our top homeland security priorities.

The bill would permit States to enact chemical security regulations that are stronger than Federal regulations. Chemical security regulations are an urgent homeland security priority, and I support the ability of the States to set tougher standards.

Wisconsin residents and Americans across the country are concerned about the serious backlog in passport application process. This bill would delay the implementation of the Western Hemisphere Travel Initiative to keep the backlog from increasing until we have a chance to resolve this issue.

I voted to table an amendment offered by Senator ALEXANDER that would have reduced funding for border, port and air security in order to provide increased funding for implementation of the REAL ID Act. That act is deeply flawed. While I am concerned that it remains an unfunded priority, I am also concerned that, if we head down the road of funding this misguided policy, the Senate will not take the necessary steps to reform the REAL ID Act. Moreover, the National Governors Association has estimated that the cost of implementing the REAL ID Act could reach $11 billion, which means that the increased funding provided by this amendment, $400 million, would do little to address the unfunded mandate of REAL ID while taking away money for pressing homeland security priorities. I will continue to push for reform of the REAL ID Act, to provide for proper funding of any Federal mandate in the reformed act, and to ensure that the implementation of the act is not rushed.

We are still spending almost twice as much on Iraq as is allocated for homeland security, diplomacy, and international assistance combined. The billions we spend each month in Iraq could be better invested in the protection of critical infrastructure and our system of national preparedness and response that failed in the wake of Hurricane Katrina. As we consider the defense appropriation this fall, I encourage my colleagues to take a broader view when it comes to our national security priorities and make the tradeoffs that must be made.

This bill would significantly increase spending on homeland security. I do not take lightly a decision to vote in favor of spending the taxpayers' money. Fiscal responsibility is one of my highest priorities, but it is imperative that we provide the resources needed to combat al-Qaida and its affiliates and protect the country.

I am pleased that the bill would appropriate funds to double the frequency of spot checks at regulated port facilities across the country, to conduct vulnerability assessments at 10 high risk ports, to create a radiation detection test center to help scan cargo and to purchase and install explosives detection equipment at airports. Much more remains to be done. I will continue to work to ensure that our national security strategies address the range of

threats we face and properly prioritizes homeland security.

IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT

Mr. KOHL. Madam President, I wish to discuss several provisions in the conference bill, H.R. 1, Implementing Recommendations of the 9/11 Commission Act of 2007. As chairman of the Special Committee on Aging, I wish to thank Senators LIEBERMAN, COLLINS, DODD, and SHELBY for working with me and my staff on provisions that will protect seniors in the event of an emergency or disaster.

It has been nearly 2 years since our Nation reeled from the tragic and shameful images of seniors abandoned during the aftermath of Hurricane Katrina. Sadly, we now know that 71 percent of the people who died were older than 60. Last year, the Special Committee on Aging held a hearing to examine how prepared the Nation is to care for our seniors in the event of a national emergency. What we learned was disheartening.

We learned that our Nation is woefully unprepared to meet the unique needs of our seniors in the event of a terrorist attack, natural disaster, or other emergency. Cookie-cutter emergency plans are of little use to seniors, especially those who depend on others for assistance in their daily lives. We need specific plans, programs, and information for all seniors facing emergencies.

That is why I teamed up with Senator COLEMAN to continue to work with the committees of jurisdiction to ensure that the Departments of Homeland Security and Transportation place seniors on the forefront of their emergency planning agenda. These provisions are an important step toward ensuring that seniors are not overlooked but are protected when the next national emergency occurs.

I thank Senators LIEBERMAN and COLLINS again for working with us to include two important provisions in titles I and IV that will address emergency preparedness and planning for older individuals.

The first provision we have successfully included amends the Homeland Security Act of 2002 to ensure that as State, local, and tribal governments develop their mass-evacuation plans they include specific procedures to inform the elderly before and during an evacuation. This will send a strong signal to States and communities that are engaged in emergency planning that seniors must be a priority and cannot be forgotten or ignored during mass evacuations. This will also assist older individuals and their families in appropriately preparing for an evacuation during an emergency or other disaster.

The second provision we have included amends the Post-Katrina Emergency Management Reform Act of 2006 to ensure that the National Exercise Program is designed to address the unique needs of older individuals. The National Exercise Program was originally created to test and evaluate our Nation's level of preparedness and capability to prevent, protect against, respond to, and recover from national disasters. Such testing and evaluation will allow emergency management entities to effectively identify, assess, and improve vulnerabilities at the State, local, and tribal levels. This provision will keep older individuals on the forefront of national emergency planning.

I thank Chairman DODD and Ranking Member SHELBY again for working with us to successfully include and expand upon our original provision in title XIV, supported by the American Public Health Association, which would ensure that public transportation workers and other related employees are trained to meet the evacuation needs of seniors in the event of a crisis. The Secretary of Homeland Security will establish a program to conduct security exercises, which will be scaled to meet the needs of specific transportation systems and must take into account the needs of seniors who utilize those systems. Additionally, another provision in this title will ensure that transportation agencies receiving grant funding in high-risk areas have mandatory security plans in place that must include appropriate evacuation and communication measures for the elderly as a component of each agency's plan. Both provisions are particularly important since so many of our seniors utilize public transportation for access to their everyday needs. Furthermore, only public transportation has the capacity to move millions of people and provide first responders with critical support in major evacuations of urban areas.

Mr. President, these four provisions will go a long way in ensuring that our seniors are taken care of if we have another national emergency or disaster. Hurricanes Katrina and Rita taught us many painful lessons that should never be forgotten. I will not forget, and I intend to pursue additional legislation aimed at explicitly safeguarding the needs of America's seniors in the event of an emergency. The time to act to protect our seniors is now.

Mr. FEINGOLD. Madam President, I want to add my thoughts to the debate on the conference report accompanying the Improving America's Security Act of 2007.

First, I want to preface my remarks by applauding the chairman and ranking member of the Homeland Security and Governmental Affairs Committee for their work on this important bill. This bill makes crucial and long overdue improvements in transportation security, critical infrastructure protection and emergency response capabilities. There is no higher priority than protecting homeland security and this bill is a key component in that effort.

I am particularly pleased that the Federal Agency Data Mining Reporting Act is included in this bill as Section 804. I have been working on this legislation for a number of years with Senator SUNUNU, Senator LEAHY, and Senator AKAKA. Many law-abiding Americans are understandably concerned about the specter of secret government programs analyzing vast quantities of public and private data about their pursuits, in search of patterns of suspicious activity. Four years after we first learned about the Defense Department's program called Total Information Awareness, there is still much Congress does not know about the Federal Government's work on data mining. This bill is an important step in allowing Congress to conduct oversight of any such programs or related research development efforts.

I supported the provision in the Senate bill which mandates the declassification of the aggregate amount of the intelligence budget. It is unfortunate that this provision was watered down during the conference process to permit the President to waive this requirement if the disclosure of this information would harm national security. The 9/11 Commission found that ''when even aggregate categorical numbers remain hidden it is hard to judge priorities and foster accountability.'' I concur with the Commission, that aggregate budget figures ''provid[e] little insight into U.S. intelligence sources and methods.'' Sharing this information with the American people will provide a greater level of transparency and accountability and in the end make us more secure.

I am pleased that this bill includes provisions to ensure proper oversight of homeland security grants. The bill requires regular auditing of homeland security grant funds to ensure that they funds are spent appropriately and effectively. I will continue to work with my colleagues to improve oversight of homeland security funding.

The conference report also includes important nonproliferation provisions. It would establish a Presidential coordinator for the prevention of WMD proliferation and terrorism. Currently, there is no point person in the Federal Government in charge of coordinating nonproliferation initiatives and efforts to prevent nuclear terrorism. We face a variety of worldwide terrorist threats. One of the most serious of those threats is the possibility that terrorists could smuggle fissile materials into the United States. This provision is an important contribution to our efforts to secure these materials and prevent the proliferation of weapons of mass destruction.

I must note that one provision of this bill troubles me greatly. That is the so-called John Doe provision concerning immunity for citizens making tips of possible terrorist threats and government officials acting on those tips. This provision was not in the bill that was passed in the Senate, nor was it in the bill that passed the House. It was apparently inspired by a lawsuit filed

after six Muslim imams were told to get off a plane they had boarded in Minneapolis, but the Judiciary Committee never had the opportunity to study it or perfect it. Regardless of its merit, this provision should have received more careful consideration by the Senate. I am deeply concerned that as written this provision appears to endorse racial, ethnic, and religious discrimination. The best way to prevent terrorism is through solid law enforcement and intelligence work, not through scare tactics or racial profiling.

I voted for this bill because it makes key changes to address security needs. However, our Nation's vulnerabilities demand more and I will continue to work to ensure that our vital homeland security needs are met.

RETIREMENT OF PAUL CULLINAN

Mr. CONRAD. Madam President, as chairman of the Budget Committee, and along with my colleague, Senator GREGG, the ranking member, I would like to gratefully acknowledge the expert assistance that the Congress has received from Paul Cullinan during his time at the Congressional Budget Office. Paul is retiring from congressional service in August, and this institution will sorely miss him.

Dr. Cullinan arrived at CBO in 1981, and has contributed to a vast range of policy analyses, budget projections, and legislative cost estimates over the past 26 years. But more important than the amount and variety of such work is the consistently high quality of that work and Paul's continual dedication to providing the Congress with thorough and timely analysis.

For the past 13 years, Paul Cullinan has served as the unit chief of CBO's Human Resources Cost Estimates Unit. He excelled in that role, and his service there allowed CBO to provide critical support to consideration of many varied pieces of legislation, including: efforts to reauthorize and extend higher education programs and the food stamps program, potential changes to Social Security, proposals to reform U.S. immigration policies, and changes to a host of income security programs. Moreover, Paul has been a key contributor to and coordinator of CBO's work on long-term budget projections, which we have come to consider more as we move toward the pending retirement of the baby-boom generation.

In addition to his superb analysis of legislative proposals, Paul has provided constant and wise support to the Budget Committees in both the Senate and the House of Representatives. In short, there are only a handful of true first-tier budget experts here on Capitol Hill, and Paul Cullinan is clearly in the top ranks of that small group—we will miss his input, careful judgment, and dedication to providing the best budgetary information possible for congressional consideration.

Mr. GREGG. Madam President, I join with Senator CONRAD in recognizing Paul Cullinan of the Congressional Budget Office. Paul's leadership, extremely dedicated work, and the products of his unit have been essential to understanding entitlement programs and the long-term fiscal condition of the United States. Paul has served CBO Directors and Budget Committee Members of the House and Senate with distinction. He represents the type of dedicated public servants whom we are fortunate to have at the CBO.

UNEMPLOYMENT INSURANCE MODERNIZATION ACT

Mr. WARNER. Madam. President, today I rise in support of the Unemployment Insurance Modernization Act which was introduced on July 25. I am pleased to join my colleagues Senators EDWARD M. KENNEDY, OLYMPIA J. SNOWE, JOHN D. ROCKEFELLER IV, and MARIA CANTWELL to introduce this bipartisan proposal which seeks to encourage States to modernize their unemployment insurance systems. The Unemployment Insurance Modernization Act would make $7 billion in incentive payments available to States to encourage them to expand eligibility for benefits and provide training to workers struggling with long-term unemployment.

The unemployment insurance, UI, program must be reformed to address fundamental shifts in the economy. The UI system provides needed benefits to millions of U.S. workers each year. But the system needs to be updated to better assist today's more highly mobile workforce and long-term unemployed workers left behind by declining industries. Today, many unemployed workers do not qualify for benefits because their most recent work is not taken into account. Others exhaust their benefits before finding work, joining 1.1 million long-term unemployed workers and an additional 1.5 million discouraged job-seekers struggling to get by. For these reasons, only 35 percent of unemployed workers currently collect unemployment benefits.

The UI Modernization Act sets aside $7 billion from tax receipts authorized under the Federal Unemployment Tax Act, FUTA, to provide incentive payments to encourage States to update their UI systems. The bill rewards states for: (1) removing barriers that block coverage for low-wage and part-time workers; (2) ensuring a more family-friendly UI system; and (3) helping dislocated workers increase their skills. It also provides $500 million in funding to States to improve the administration of their unemployment compensation systems. These administrative payments are fully paid for from the existing UI trust fund.

The UI Modernization Act would give States the resources and flexibility they need to pass important reforms. Each State would have a chance to receive a share of the $7 billion set aside for incentive payments. To receive one-third of its allotted funds, a State must adopt an ''alternative base period'' allowing workers to meet eligibility requirements by counting their most recent wages. This makes the system—which has traditionally relied on wage data that is up to 6 months old more accurate and helps workers who have recently satisfied earnings requirements to collect the benefits they deserve. States that have already adopted such a system would also receive these incentive payments.

States will receive the additional two-thirds of their share of funds if they adopt or have adopted two of the following reforms that benefit workers: (1) provide unemployment compensation for workers who have voluntarily left their jobs due to the illness or disability of an immediate family member, the relocation of a spouse for employment, or domestic violence; (2) provide training benefits to unemployed workers laid off from a ''declining'' occupation who are enrolled in a State-approved training program for entry into a high-demand occupation; (3) provide unemployment compensation benefits to individuals seeking part-time work; (4) raise maximum compensation caps so that all long-term unemployed workers can receive a full 26 weeks of benefits; or (5) pay unemployed workers at least an extra $15 per week for each of the worker's dependents.

Mr. President, in periods of unemployment, workers need a sound program of training and benefits to find new and rewarding opportunities. This bill will provide important resources to States like Virginia, as they improve their programs to help workers and their families in times of need.

GUN VIOLENCE

Mr. LEVIN. Madam President, despite the outcry for change in the wake of the deadliest shooting rampage in our Nation's history, too many schools continue to be plagued by gun violence. True prevention requires reducing the likelihood of death or injury before an incident occurs. Unfortunately, we have still not done enough to prevent dangerous guns from falling into the hands of those who may intentionally or unintentionally use them to harm themselves or others.

Earlier this month, a group of engineering students at Kettering University, in Flint, MI, gathered in an apartment to celebrate the beginning of their 3-month job co-ops, part of their degree requirements. One of the students stumbled across a 9mm handgun lying on a dresser in one of the apartment's bedrooms. He picked up the weapon, and, after seeing himself in a mirror, made a sudden spin move with it. As he spun around, the gun accidentally discharged. Karl Joseph Hansen, 21 years old and asleep at the time, died of a single gunshot wound to the head.

Because a loaded handgun was present in an otherwise unremarkable

celebration, one student was left dead and another has been charged with involuntary manslaughter, a felony punishable by up to 15 years in prison. Such an event is extremely difficult to comprehend. For the people and families directly involved, it is nearly impossible.

Shortly after the tragedy at Kettering University, following a heavy night of drinking, an undergraduate student at Yale University decided it would be a good idea to fire one of his pistols in the basement of his fraternity house. When he heard the shots, a visitor to the school ran downstairs to investigate. The student responded to the visitor's requests for him to put the gun down by firing two rounds of blanks at the ceiling. When the visitor then tried to convince the student even blanks could be dangerous, he is reported to have responded by asking ''Why don't I point it at your head and find out?'' When the student was subsequently arrested, police discovered an AK–47 assault rifle, AR–15 assault rifle, two rifles, a shotgun, several other pistols and nearly 5,000 rounds of ammunition in his bedroom. He has been charged with two counts of illegal possession of an assault rifle, unlawful discharge of a firearm, reckless endangerment in the first degree, threatening in the second degree, and breach of peace in the second degree.

Time after time, we see these tragedies reported in the news. Yet Congress has not taken the necessary steps to help control these acts of violence or ease the anxiety that many parents and families feel each day as their children head off to school. By removing firearms from potentially dangerous situations, we can prevent these types of tragedies from occurring. Congress should take up and pass sensible gun legislation as soon as possible.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

• Mr. REED. Madam President, due to the delay of my flight, I was unavoidably absent for vote No. 285, the vote to invoke cloture on the motion to proceed to H.R. 976.

Had I been present, I would have voted yes on the motion to proceed. This is one of the most important pieces of legislation that the Senate will consider this year. It is the first reauthorization of the highly successful Children's Health Insurance Program, or CHIP. I am proud to have been a part of the original bipartisan effort to create this initiative back in 1997. While some on the other side of the aisle will criticize the Finance Committee agreement pending before this Chamber, no one can deny CHIP has played a crucial role in helping to reduce the rate of uninsured low-income children over the past 10 years. The Congressional Budget Office estimates that the number of uninsured children fell from 22.5 percent in 1996 to 16.9 percent in 2005 due in large part to CHIP.

I look forward to a vigorous and spirited debate on this bill, and I am dedicated to working very closely with my colleagues to ensure the Senate will advance a reauthorization bill that reaffirms our commitment to health insurance coverage for children in Rhode Island and around the country.•

ADDITIONAL STATEMENTS

COMMEMORATING THE 1997 SPRING CREEK FLOOD

• Mr. ALLARD. Madam President, today I commemorate the Spring Creek Flood in Fort Collins, CO, which occurred 10 years ago this weekend. As the rains began to fall on the evening of July 27, 1997, it would have been hard for anyone to believe that this seemingly typical summer afternoon storm would wreak havoc on the city.

All told, 14.5 inches fell on Fort Collins within a 31-hour period of time. Composite rainfall patterns indicated that over 10 inches of rain blanketed a 30 square mile area of northern Colorado. This flood took the lives of 5 Fort Collins residents and forced over 400 to be rescued from the rising waters, severely damaged or destroyed approximately 2,000 homes and businesses across the city, caused over $200 million in damage, including the near destruction of Colorado State University's library. The storm derailed a train and caused buildings to explode. This was not something this college town was used to experiencing. Those residents who were fortunate enough to be unaffected by the flood that night awoke to the sounds of helicopters, massive road closures, and local schools converted into Red Cross shelters. For a place that occasionally made national news by appearing on lists for ''best place to live'' and ''most restaurants per capita,'' this sudden and shocking destruction was not the reason why the people of Fort Collins ever imagined their town would be the top story on all the news networks.

As quickly as the rains came that night, and continued through most of the following day, it was all over. Sadly, like the pictures we all vividly remember of recent natural disasters in the United States, many wondered aloud in Fort Collins 10 years ago how this could have happened here. As the small creeks that flowed peacefully along the sides of bike trails and through the parks and baseball fields of the city suddenly swelled and transformed into violent streams of water that engulfed so much, it seemed probable that this city of about 110,000 residents would be permanently affected by this storm for a long time to come. For a community that had experienced tremendous expansion and job growth through the 1990s—due considerably to the rise of the tech boom—it appeared the good times had come to an end. With so many infrastructures in disrepair, it seemed unlikely that companies would continue to expand to Fort Collins in the manner they had been doing over the years preceding the flood.

What had long been, and continues to be, the heart of Fort Collins, Colorado State University, received the brunt of the damage. Just 5 weeks prior to the start of classes, a 7-foot wall of water that had concentrated its strength through the run off of many smaller floods tore through the main campus. Thirty-six buildings sustained significant damage, most especially the newly remodeled Morgan Library and the Lory Student Center. Rain-water, sewage and debris rushed through the library and destroyed about 425,000 books and journals, about one-quarter of the library's inventory. As school began that year, the students and professors adapted to a more nomadic life, but worked together, as they all faced the same obstacles.

As time moved on, CSU began to recover from the flood, the Morgan Library was rebuilt and CSU took the opportunity to update its electronic resources, making them state-of-the-art. The drainage systems were updated and replaced, with walls and landscaping put in place to counter a flood 6 inches greater than what was experienced in 1997. As CSU recovered, the city did as well. Beautification and clean-up efforts took place on a massive scale, stronger bridges were built, and creeks were redesigned to more evenly disperse water should this 500-year flood ever occur again. The community at-large pitched in to clean up the parks and neighborhoods that were littered by debris. Local businesses, the school district, and CSU all continued to work together and leaned on each other to bring Fort Collins back.

As the Colorado summer faded into fall and the days began getting shorter, the mounds of ruined furniture and rows of unusable refrigerators that lined the neighborhood sidewalks for so long slowly began disappearing from the city's landscape and life started to get back to normal. Fort Collins has continued to grow over the last 10 years and so has CSU. Still, there are many reminders today of the storm: from the occasional open spaces that were simply wiped out by the flood and never rebuilt; to new buildings, roads and bridges that were built following the storm; to the glaring markers that line the Spring Creek Trail showing the water levels on that day 10 years ago.

Sadly, Fort Collins' experience with flooding and tragedy is shared by many communities across the Nation, most especially along the gulf coast in Louisiana and Mississippi, as many continue to struggle to find some semblance of normalcy almost 2 years after Katrina and Rita. Recently, we have

seen massive floods throughout Texas and in the Midwest as well, particularly in Kansas and Missouri. While all these events are all uniquely tragic, it is my hope that the devastation experienced in Fort Collins, Colorado 10 years ago can serve as an example to the many other communities across the country that are not as far removed from their storms: that there is a light at the end of the tunnel, and as insurmountable as a natural disaster may seem, life will and does go on.●

IN MEMORY OF MATT BURTON AND SCOTT DESMOND

● Mrs. BOXER. Madam President, it is with a heavy heart that I ask my colleagues to join me today in honoring the memory of two courageous firefighters, captain Matt Burton of Concord, CA and fire engineer Scott Desmond of Brentwood, CA. Captain Burton and Fire Engineer Desmond were heroes who died in the line of duty in San Pablo, CA on July 21, 2007. Captain Burton was 34 and Fire Engineer Desmond was 37.

Both men were dedicated firefighters who served in the Contra Costa County Fire Department for more than 10 years. They were killed while battling a residential fire in a neighborhood outside of San Pablo. The two residents of the home, Delbert and Gayle Moore, were also killed in the blaze.

Captain Burton and Fire Engineer Desmond are remembered by friends and colleagues as cheerful and full of life as well as seriously dedicated to their profession. The men served the community with enthusiasm and a commitment to protecting the residents of Contra Costa County.

Captain Matt Burton and Fire Engineer Scott Desmond risked their lives every day to make Contra Costa County safer. We will always be grateful for their brave service to their community and the State of California. Our hearts go out to their families, friends, and colleagues who struggle with their loss.

Captain Burton is survived by his wife, Chantel, and his two children, Megan and Joshua Matthew. Fire Engineer Desmond is survived by his wife Carolyn and his 17-month-old son Tyler.●

50TH ANNUAL BAT FLIGHT CELEBRATION

● Mr. DOMENICI. Madam President, I would like to honor and give special attention to the 50th annual Bat Flight Celebration Breakfast, at New Mexico's beautiful Carlsbad Caverns. Every evening over 300,000 Mexican free-tail bats exit the caves to feed, only to return in the early morning hours. It is in these early morning hours, once a year, that visitors gather to observe the return of these thousands of bats to their homes inside these incredible caves. On Saturday July 28, 2007, for the 50th time, over 600 visitors gathered and enjoyed a New Mexican breakfast while witnessing this magnificent in-flight return to the cave.

Created by inland sea between 250 and 280 million years ago, the limestone caves of Carlsbad were declared a national monument in 1923, and the surrounding area was made a national park in 1930, in order to preserve its unique beauty and geology. Carlsbad Caverns National Park has more than 100 known caves and covers over 46,000 acres, with approximately 33,000 acres designated as wilderness. The park's most prominent feature is the cavern itself, which contains one of the world's largest underground chambers and countless spectacular geological formations, many of which are easily accessible along a 3-mile paved underground trail.

The next time you happen to be in New Mexico, I encourage you to come visit and take some time to enjoy all New Mexico has to offer. From the beautiful rock formations, the stalagmites and stalactites, the wildlife, the culture and the history—the unique caverns near Carlsbad, NM, have it all. New Mexico is a great place, and the Carlsbad Caverns help make it so. To all, past and present, who have worked hard to preserve Carlsbad Caverns and showcase the annual bat flight celebration, I extend a heartfelt thank you.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:20 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3093. An act making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2008, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the act (H.R. 1) to provide for the implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States.

ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on today, July 30, 2007, by the President pro tempore (Mr. BYRD).

S. 1868. An act to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

MEASURES REFERRED

The following bill was read, and referred as indicated:

H.R. 2011. An act to designate the Federal building and United States courthouse located at 100 East 8th Avenue in Pine Bluff, Arkansas, as the ''George Howard, Jr. Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

MEASURES DISCHARGED

The following measure was discharged from the Committee on Homeland Security and Governmental Affairs, and referred as indicated:

H.R. 2011. An act to designate the Federal building and United States courthouse located at 100 East 8th Avenue in Pine Bluff, Arkansas, as the ''George Howard, Jr. Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3093. An act making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2008, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2703. A communication from the Acting Deputy Chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, a report relative to the Department's decision to convert support functions currently performed by military personnel at Fleet Composite Squadron Six in Norfolk, Virginia, to a contractor; to the Committee on Armed Services.

EC–2704. A communication from the Chief of Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts'' ((RIN1545–BB64)(TD 9340)) received on July 25, 2007; to the Committee on Finance.

EC–2705. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, the report of a bill relative to the shipwrecked vessel RMS Titanic; to the Committee on Foreign Relations.

EC–2706. A communication from the Assistant General Counsel for Regulatory Services,

Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Special Demonstration Programs—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities'' (72 FR 36676) received on July 25, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–2707. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Technical Assistance on Data Collection—General Supervision Enhancement Grants'' (72 FR 37212) received on July 25, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–2708. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Technical Assistance on Data Collection—Technical Assistance Center for Data Collection, Analysis, and Use for Accountability in Special Education and Early Intervention'' (72 FR 37086) received on July 25, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–2709. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''The Individuals with Disabilities Education Act Multi-Year Individualized Education Program Demonstration Program'' (RIN1820–ZA41) received on July 25, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–2710. A communication from the Assistant General Counsel for Regulatory Services, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''The Individuals with Disabilities Education Act Paperwork Waiver Demonstration Program'' (RIN1820–ZA42) received on July 25, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–2711. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, ''Letter Report: Certification of the Sufficiency of the Washington Convention Center Authority's Projected Revenues and Excess Reserve to Meet Projected Operating and Debt Service Expenditures and Reserve Requirements for Fiscal Year 2008''; to the Committee on Homeland Security and Governmental Affairs.

EC–2712. A communication from the Associate Special Counsel for Legal Counsel and Policy, Office of Special Counsel, transmitting, pursuant to law, the report of a rule entitled ''Freedom of Information Act Requests; Production of Records or Testimony'' (5 C.F.R. Part 1820) received on July 25, 2007; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 456. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to expand and improve gang prevention programs, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1895. A bill to aid and support pediatric involvement in reading and education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SUNUNU (for himself and Mr. GREGG):

S. 1896. A bill to designate the facility of the United States Postal Service located at 11 Central Street in Hillsborough, New Hampshire, as the ''Officer Jeremy Todd Charron Post Office''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. VITTER:

S. 1897. A bill to allow for expanded uses of funding allocated to Louisiana under the hazard mitigation program while preserving the goals of the program to reduce future damage from disasters through mitigation; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REID (for Mrs. CLINTON (for herself, Mrs. DOLE, Ms. MIKULSKI, Mr. GRAHAM, Mr. KENNEDY, and Mr. BROWN)):

S. 1898. A bill to amend the Family and Medical Leave Act of 1993 to expand family and medical leave for spouses, sons, daughters, and parents of servicemembers with combat-related injuries; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CARDIN:

S. 1899. A bill to require every American to have health insurance coverage; to the Committee on Finance.

By Mr. MCCAIN:

S. 1900. A bill to authorize appropriations for the United States Institute for Environmental Conflict Resolution; to the Committee on Environment and Public Works.

By Mr. THUNE:

S. 1901. A bill to amend Public Law 98-513 to provide for the inheritance of small fractional interests within the Lake Traverse Indian Reservation; to the Committee on Indian Affairs.

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

S. 1902. A bill to limit cost growth associated with major defense base closures and realignments implemented as part of the 2005 round of defense base closure and realignment; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. CASEY:

S. Res. 283. A resolution expressing the sense of the Senate that the United States Postal Service should discontinue the practice of contracting out mail delivery services; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REID (for himself and Mr. MCCONNELL):

S. Res. 284. A resolution to authorize testimony and legal representation in City and County of Denver v. Susan I. Gomez, Daniel R. Egger, and Carter Merrill; considered and agreed to.

ADDITIONAL COSPONSORS

S. 197

At the request of Mr. LEAHY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 197, a bill to authorize salary adjustments for justices and judges of the United States for fiscal year 2007.

S. 358

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 358, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. 431

At the request of Mr. SCHUMER, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 431, a bill to require convicted sex offenders to register online identifiers, and for other purposes.

S. 439

At the request of Mr. REID, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 439, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation.

S. 456

At the request of Mrs. FEINSTEIN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 456, a bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to expand and improve gang prevention programs, and for other purposes.

S. 469

At the request of Mr. BAUCUS, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 469, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 519

At the request of Mr. MCCAIN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 519, a bill to modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, and for other purposes.

S. 522

At the request of Mr. BAYH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 522, a bill to safeguard the economic health of the United States and the health and safety of the United States

citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement, and for other purposes.

S. 548

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 548, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 734

At the request of Mr. SPECTER, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 734, a bill to amend the Internal Revenue Code of 1986 to reduce the rate of the tentative minimum tax for noncorporate taxpayers to 24 percent.

S. 742

At the request of Mrs. MURRAY, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 742, a bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products, and for other purposes.

S. 764

At the request of Mrs. CLINTON, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 764, a bill to amend title XIX and XXI of the Social Security Act to permit States the option of coverage of legal immigrants under the Medicaid Program and the State Children's Health Insurance Program (SCHIP).

S. 773

At the request of Mr. WARNER, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 773, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 777

At the request of Mr. CRAIG, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 777, a bill to repeal the imposition of withholding on certain payments made to vendors by government entities.

S. 799

At the request of Mr. HARKIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 799, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 814

At the request of Mr. SPECTER, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 814, a bill to amend the Internal Revenue Code of 1986 to allow the deduction of attorney-advanced expenses and court costs in contingency fee cases.

S. 881

At the request of Mrs. LINCOLN, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 881, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 940

At the request of Mr. BAUCUS, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 940, a bill to amend the Internal Revenue Code of 1986 to permanently extend the subpart F exemption for active financing income.

S. 1003

At the request of Ms. STABENOW, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1003, a bill to amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

S. 1050

At the request of Mr. HARKIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1050, a bill to amend the Rehabilitation Act of 1973 and the Public Health Service Act to set standards for medical diagnostic equipment and to establish a program for promoting good health, disease prevention, and wellness and for the prevention of secondary conditions for individuals with disabilities, and for other purposes.

S. 1159

At the request of Mr. HAGEL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1159, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

S. 1259

At the request of Mrs. CLINTON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1259, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for developing countries to promote quality basic education and to establish the achievement of universal basic education in all developing countries as an objective of United States foreign assistance policy, and for other purposes.

S. 1286

At the request of Mr. SMITH, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1286, a bill to authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe.

S. 1340

At the request of Mrs. LINCOLN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1340, a bill to amend title XVIII of the Social Security Act to provide Medicare beneficiaries with access to geriatric assessments and chronic care coordination services, and for other purposes.

S. 1398

At the request of Mr. REID, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1398, a bill to expand the research and prevention activities of the National Institute of Diabetes and Digestive and Kidney Diseases, and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 1557

At the request of Mr. DODD, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1557, a bill to amend part B of title IV of the Elementary and Secondary Education Act of 1965 to improve 21st Century Community Learning Centers.

S. 1605

At the request of Mr. CONRAD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1605, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1651

At the request of Mr. KENNEDY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1651, a bill to assist certain Iraqis who have worked directly with, or are threatened by their association with, the United States, and for other purposes.

S. 1668

At the request of Mr. DODD, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Illinois (Mr. OBAMA) were added as cosponsors of S. 1668, a bill to assist in providing affordable housing to those affected by the 2005 hurricanes.

S. 1790

At the request of Mr. OBAMA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1790, a bill to make grants to carry out activities to prevent the incidence of unintended pregnancies and sexually transmitted infections among teens in racial or ethnic minority or immigrant communities, and for other purposes.

S. 1815

At the request of Mr. STEVENS, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. 1815, a bill to assure

compliance with basic standards for all-terrain vehicles in the United States, and for other purposes.

S. 1843

At the request of Mr. KENNEDY, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 1843, a bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes.

S. 1851

At the request of Mr. SESSIONS, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1851, a bill to amend the Internal Revenue Code of 1986 to allow personal exemptions under the individual alternative minimum tax, and for other purposes.

S. 1855

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1855, a bill to amend the Internal Revenue Code of 1986 to provide relief to individuals from the penalty for failure to pay estimated taxes on amounts attributable to the alternative minimum tax in cases where the taxpayer was not subject to the alternative minimum tax in the preceding year.

S. 1881

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1881, a bill to amend the Americans with Disabilities Act of 1990 to restore the intent and protections of that Act, and for other purposes.

S. 1894

At the request of Mr. DODD, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1894, a bill to amend the Family and Medical Leave Act of 1993 to provide family and medical leave to primary caregivers of servicemembers with combat-related injuries.

S. RES. 276

At the request of Mr. LUGAR, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. Res. 276, a resolution calling for the urgent deployment of a robust and effective multinational peacekeeping mission with sufficient size, resources, leadership, and mandate to protect civilians in Darfur, Sudan, and for efforts to strengthen the renewal of a just and inclusive peace process.

At the request of Mr. REID, his name was added as a cosponsor of S. Res. 276, supra.

S. RES. 278

At the request of Mr. CASEY, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. Res. 278, a resolution expressing the sense of the Senate regarding the announcement of the Russian Federation of its suspension of implementation of the Conventional Armed Forces in Europe Treaty.

S. RES. 281

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 281, a resolution congratulating Cal Ripken Jr. for his induction into the Baseball Hall of Fame, for an outstanding career as an athlete, and for his contributions to baseball and to his community.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1895. A bill to aid and support pediatric involvement in reading and education; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, today I introduce with my colleague, Senator GRASSLEY, the Prescribe A Book Act.

Our legislation amends the No Child Left Behind Act to create a federal pediatric early literacy grant initiative based on the long-standing, successful Reach Out and Read program. The program would award grants to highly qualified nonprofit entities to train doctors and nurses in advising parents about the importance of reading aloud and to give books to children at pediatric check-ups from 6 months to five years of age, with a priority for children from low-income families. It builds on the relationship between parents and medical providers and helps families and communities encourage early literacy skills so children enter school prepared for success in reading.

The Reach Out and Read model has consistently demonstrated effectiveness in increasing parent involvement and boosting children's reading proficiency. Research published in peer-reviewed, scientific journals has found that parents who have participated in the program are significantly more likely to read to their children and include more children's books in their home, and that children served by the program show an increase of 4–8 points on vocabulary tests. I have seen upclose the positive impact of this program on children and their families when visiting a number of the 40 Rhode Island Reach Out and Read sites.

I urge my colleagues to cosponsor the Prescribe A Book Act and work for its inclusion in the upcoming reauthorization of the No Child Left Behind Act.

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

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

S. 1895

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 ''Prescribe A Book Act''.

SEC. 2. PEDIATRIC INVOLVEMENT IN READING AND EDUCATION.

Part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6361 et seq.) is amended by adding at the end the following:

''Subpart 5—Pediatric Early Literacy Program

''SEC. 1261. DEFINITIONS.

''In this subpart:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a nonprofit organization that has, as determined by the Secretary, demonstrated effectiveness in the following areas:

''(A) Providing peer–to–peer training to healthcare providers in research–based methods of literacy promotion as part of routine pediatric health supervision visits.

''(B) Delivering a training curriculum through a variety of medical education settings, including residency training, continuing medical education, and national pediatric conferences.

''(C) Providing technical assistance to local healthcare facilities to effectively implement a high-quality Pediatric Early Literacy Program.

''(D) Offering opportunities for local healthcare facilities to obtain books at significant discounts, as described in section 1266.

''(E) Integrating the latest developmental and educational research into the training curriculum for healthcare providers described in subparagraph (B).

''(2) PEDIATRIC EARLY LITERACY PROGRAM.—The term 'Pediatric Early Literacy Program' means a program that—

''(A) creates and implements a 3-part model through which—

''(i) healthcare providers, doctors, and nurses, trained in research–based methods of early language and literacy promotion, encourage parents to read aloud to their young children, and offer developmentally appropriate recommendations and strategies to parents for the purpose of reading aloud to their children;

''(ii) healthcare providers, at health supervision visits, provide each child between the ages of 6 months and 5 years a new, developmentally appropriate children's book to take home and keep; and

''(iii) volunteers in waiting areas of healthcare facilities read aloud to children, modeling for parents the techniques and pleasures of sharing books together;

''(B) demonstrates, through research published in peer-reviewed journals, effectiveness in positively altering parent behavior regarding reading aloud to children, and improving expressive and receptive language in young children; and

''(C) receives the endorsement of nationally–recognized medical associations and academies.

''SEC. 1262. PROGRAM AUTHORIZED.

''The Secretary is authorized to award grants to eligible entities under this subpart to enable the eligible entities to implement Pediatric Early Literacy Programs.

''SEC. 1263. APPLICATION.

''An eligible entity that desires to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

''SEC. 1264. MATCHING REQUIREMENT.

''An eligible entity receiving a grant under this subpart shall provide either directly or through private contributions, in cash or in-kind, non-Federal matching funds equal to not less than 50 percent of the grant received by the eligible entity under this subpart.

''SEC. 1265. USE OF GRANT FUNDS.

''(a) IN GENERAL.—An eligible entity receiving a grant under this subpart shall—

''(1) enter into contracts with private nonprofit organizations, or with public agencies, selected based on the criteria described in subsection (b), under which each contractor will agree to establish and operate a Pediatric Early Literacy Program;

''(2) provide such training and technical assistance to each contractor of the eligible entity as may be necessary to carry out this subpart; and

''(3) include such other terms and conditions in an agreement with a contractor as the Secretary determines to be appropriate to ensure the effectiveness of such programs.

''(b) CONTRACTOR CRITERIA.—Contractors shall be selected under subsection (a)(1) on the basis of the extent to which the contractors give priority to serving a substantial number or percentage of at–risk children, including—

''(1) low–income children (defined in this section as children from families with incomes below 200 percent of the poverty line), particularly low–income children in high–poverty areas;

''(2) children without adequate medical insurance;

''(3) children enrolled in a State Medicaid program, established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or in the State Children's Health Insurance Program established under title XXI of such Act (42 U.S.C. 1397aa et seq.);

''(4) children living in rural areas;

''(5) migrant children; and

''(6) children with limited access to libraries.

''SEC. 1266. RESTRICTION ON PAYMENTS.

''The Secretary shall make no payment to eligible entities under this subpart unless the Secretary determines that the eligible entity or a contractor of the eligible entity, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts that are at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

''SEC. 1267. REPORTING REQUIREMENT.

''An eligible entity receiving a grant under this subpart shall report annually to the Secretary on the effectiveness of the program implemented by the eligible entity and the programs instituted by each contractor of the eligible entity, and shall include in the report a description of each program.

''SEC. 1268. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart—

''(1) $15,000,000 for fiscal year 2009;

''(2) $16,000,000 for fiscal year 2010;

''(3) $17,000,000 for fiscal year 2011;

''(4) $18,000,000 for fiscal year 2012; and

''(5) $19,000,000 for fiscal year 2013.''.

By Mr. SUNUNU (for himself and Mr. GREGG):

S. 1896. A bill to designate the facility of the United States Postal Service located at 11 Central Street in Hillsborough, New Hampshire, as the ''Officer Jeremy Todd Charron Post Office''; to the Committee on Homeland Security and Governmental Affairs.

Mr. SUNUNU. Mr. President, I rise to honor a fallen officer of the Epsom, NH, Police Department, Officer Jeremy Todd Charron, by introducing a bill to designate the United States Postal Service facility at 11 Central Street in Hillsborough, New Hampshire, as the Officer Jeremy Todd Charron Post Office.

Born on March 18, 1973, Officer Charron was the third of five children to Bob and Fran Charron. Originally from Pittsfield, NH, Jeremy and his family moved to Hillsborough in 1977. Throughout his early life, Jeremy grew intensely goal orientated, a trait that persisted throughout his shortened life, and by the time he had reached second grade he knew his calling was to one day serve as a U.S. Marine.

Although he was an outstanding athlete in many sports, he excelled at playing defense on the soccer field. The same tenacity that Jeremy used on the soccer field, he carried with him off the field. One poignant example of Jeremy's developing leadership occurred as a friend lost his hair from cancer treatments and was teased by fellow classmates. While it may have been easier for most students to ignore the taunting of other classmates, Jeremy actively defended his friend. Throughout Jeremy's life, he stood up for what he thought was right and protected those who could not defend themselves.

During Jeremy's high school years at Hillsborough-Deering High School, he grew into a leader, quickly becoming active in all aspects of the school community. His peers voted him ''most spirited'' and elected him class president. At the same time, he had convinced 8 classmates to join the Marines with him following graduation. Together, they would dedicate their weekends to training for their future service in the Marine Corps.

After graduating high school in 1992, Jeremy entered the Marine Corps and proudly served his country for 4 years. As his enlistment term drew to a close, he had a new aspiration, which was to become a New Hampshire State Trooper, and looked forward to starting a family.

To achieve this objective, Jeremy enrolled at the New Hampshire Technical College in Concord to study Criminal Justice, and was hired by the Epsom, New Hampshire Police Department as a part-time and then full-time police officer.

Sadly, Jeremy's dream was cut short. On August 24, 1997, the morning after he attended the funerals of New Hampshire State Troopers Leslie Lord and Scott Phillips, Officer Charron was responding to a report of a suspicious car, which contained two men. Tragically, while Officer Charron questioned one of the men, the individual pulled out a gun and opened fire. Although Jeremy was wearing a bullet-proof vest, one of the bullets struck him in an unprotected area. Despite his fatal wounds, Jeremy heroically returned fire until he collapsed, forcing his two killers to abandon their car and steal a near-by truck that could be identified by police, eventually leading to their capture.

Had Jeremy's dreams not been cut short at the age of 24, he would have achieved his goals of becoming a State Trooper and having a family of his own. Jeremy's murderers stripped our Nation, the State of New Hampshire and the community of a true patriot, citizen, and role model, as well as a loving friend and family member.

Ten years have gone by since Jeremy's passing and a new generation of 7 nieces and nephews know Jeremy's stories. People of Hillsborough, NH, still have stories to share and lessons to learn from their very own American hero. As the years move forward, the citizens and future generations of Hillsborough will always remember Jeremy and share anecdotes about his life when they visit the Officer Jeremy Todd Charron Post Office Building.

By Mr. REID (for Mrs. CLINTON (for herself, Mrs. DOLE, Ms. MIKULSKI, Mr. GRAHAM, Mr. KENNEDY, and Mr. BROWN)):

S. 1898. A bill to amend the Family and Medical Leave Act of 1993 to expand family and medical for spouses, sons, daughters, and parents of servicemembers with combat-related injuries; to the Committee on Health, Education, Labor, and Pensions.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

Mrs. CLINTON. Mr. President, I rise today to introduce the Military and Family Medical Leave Act, bipartisan legislation that extends the Family and Medical Leave Act, FMLA, for up to 6 months for children, spouses and parents of soldiers who have been injured in combat. This legislation implements a key recommendation made last week by the Commission on Care for America's Returning Wounded Warriors. I would also like to acknowledge my colleagues Senators DOLE, MIKULSKI, GRAHAM, KENNEDY and BROWN whose partnership on this legislation reflects the fact that supporting our families and service-members is a bipartisan, common sense issue.

The families of our servicemen and women face extraordinary demands as they struggle to care for loved ones injured in service to our Nation. Yet, currently, family members of these injured servicemembers receive no additional leave to accommodate the support they need.

The Commission on Care for America's Returning Wounded Warriors was established in March 2007 with the specific goals of conducting a comprehensive review of services the Government currently provides to our wounded warriors and delivering recommendations to the President, Secretary of Defense, and Secretary of Veterans Affairs.

In its review, the commission found that 33 percent of active duty, 22 percent of reserve component, and 37 percent of retired/separated servicemembers report that a family member or close friend relocated for extended periods of time to be with them while

they were in the hospital. In addition, 21 percent of active duty, 15 percent of reserve component, and 24 percent of retired/separated servicemembers say friends or family gave up a job to be with them or act as their caregiver.

To address this situation and help support these caregivers, the commission recommended strengthening family support programs by extending the FMLA for up to 6 months for the family members of seriously injured soldiers. This is a step we can make immediately that will make a real difference. Our men and women in uniform have made tremendous sacrifices on our behalf and we have a responsibility to do everything we can to make sure they have the care and support they need.

The Military Family and Medical Leave Act will enact this recommendation by amending the FMLA to allow up to 6 months leave for a family member of a servicemember who has a combat-related injury and meets the eligibility requirements in the law.

It is my hope that my colleagues will join Senators DOLE, MIKULSKI, GRAHAM, KENNEDY, BROWN and me in supporting this important legislation.

By Mr. CARDIN:

S. 1899. A bill to require every American to have health insurance coverage; to the Committee on Finance.

Mr. CARDIN. Mr. President, I take this time to explain a bill I am filing today that will establish universal health coverage called Universal Health Coverage Act. Let me tell you why I am introducing this bill.

Our health care system provides the highest quality health care in the world if you are fortunate to get access to it. People come from all over the world to come to our great academic centers to get their health care needs met and to train their health care professionals.

In my home State of Maryland, I am very proud of the University of Maryland Medical Center and Johns Hopkins University. We have great institutions, such as the National Institutes of Health, that provide top-quality health care.

The problem is too many people cannot get access to affordable quality health care in America. We have 46 million uninsured; 9 million are children. We spend more money than any other country by far on health care, and yet our health care results do not reflect that type of investment of our public funds.

The No. 1 problem in health care in America today is the number of uninsured. We need to do something about it. The Universal Health Coverage Act does exactly that. It says every person in this country must have health insurance.

We are paying for the people who do not have health insurance. Those of us who have health coverage are paying more for our doctors and hospitals. We pay more in taxes because people have no health insurance. The reason is they have delayed diagnosis and treatment that leads to more serious illness and treatment for those who have no health insurance.

We all pay the price with higher premiums and cost. According to the Institute of Medicine, taxpayers shoulder 65 percent of the total cost of uncompensated care through subsidies to hospitals and clinics. The same study showed that poor health care status from being uninsured costs our Nation between $65 billion and $130 billion a year. It is in our interest as those who have health insurance and as taxpayers that we have universal health coverage in America.

Why does it cost more for someone who has no health insurance? With two people with the same types of conditions, it can actually cost our system more for those who have no health insurance because they do not seek preventative health care. Fewer than one-half of uninsured women ages 50 to 64 have received a mammogram in the past 2 years compared to 75 percent of women with insurance. Only 18 percent of uninsured adults over the age of 50 have had colon cancer screenings in the last 5 years compared to 56 percent of adults with insurance. Only 35 percent of uninsured Americans had dental examinations in the last year. When uninsured receive care, it is often at a much later point and is more costly and less efficient. We can do something about it.

Who are the uninsured? Another myth: Eighty-one percent of the uninsured actually come from working families. These are working families who are unable, for whatever reasons, to get affordable health care coverage. Low-income Americans with family incomes below 200 percent of poverty run the highest risk of being uninsured. More than one-third of the poor and 30 percent of the near poor with incomes between 100 percent and 200 percent of poverty lack health insurance.

My legislation is simple. The Universal Health Coverage Act requires personal responsibility, requires everyone to have health insurance, and it builds on the current employer-based system and protects government-sponsored health programs.

We would require every American to have qualified health coverage. That qualified health coverage could be Medicare, it could be our veterans health care, it could be one of the governmental programs, or it could be an employer-sponsored health plan.

We then empower the Secretary of Health to work with the State insurance commissioners to develop three low-cost plans in every State in the Nation so there will be an available product to those who cannot find an affordable health care plan.

The plans would be available for those whose incomes are below 400 percent of poverty. The reason we picked that number, 400 percent of poverty, is those above generally have the opportunity to buy insurance at work. Those below are the most vulnerable in our community.

Those who fail to enroll in any coverage would be required to pay a tax which would be equal to the premiums so that the Government can enroll them in one of the low-cost plans within their State.

This plan makes sense. It is a framework on which we can build. It says we will not tolerate 46 million people without health insurance, 9 million children without health insurance. It allows the States to do innovative approaches to deal with those who otherwise would have problems affording their health care. We expect States to act. States are already acting. States are already showing leadership. This framework will give States the incentive to move further along. Employers who now know every employee needs health benefits are more likely to provide insurance for their workforce, and there would be an affordable product because everyone would be in the system. We would not have adverse risk collection or cherry-picking by insurance companies. It gives us the framework to move forward and will allow the Federal Government to move in those areas in which the Federal Government can do best to help those who are otherwise vulnerable.

I hope we will not let this opportunity go without dealing with the No. 1 problem in our health care system, and that is dealing with people who do not have health insurance. I look forward to working with all my colleagues so we can work on a doable plan, so this country not only has the highest quality health care, but we have a system in which all Americans have access to that quality care.

By Mr. MCCAIN:

S. 1900. A bill to authorize appropriations for the United States Institute for Environmental Conflict Resolution; to the Committee on Environment and Public Works.

Mr. MCCAIN. Mr. President, I am pleased to introduce legislation to continue Federal support for the U.S. Institute for Environmental Conflict Resolution. Congressman GRIJALVA has introduced a similar bill in the House of Representatives.

In 1998, the Congress enacted legislation to establish the U.S. Institute for Environmental Conflict Resolution with the purpose of offering an alternative to litigation for parties in dispute over environmental conflicts. As we know, many environmental conflicts often result in lengthy and costly court proceedings and may take years to resolve. In cases involving Federal Government agencies, the costs for court proceeding are usually paid for by taxpayers. While litigation is still a recourse to resolve disputes, the Congress recognized the need for alternatives, such as mediation and facilitated collaboration, to address the rising number of environmental conflicts

that have clogged Federal courts, executive agencies, and the Congress.

The Institute was placed at the Morris K. Udall Foundation in recognition of former Representative Morris K. Udall from Arizona and his exceptional environmental record, as well as his unusual ability to build a consensus among fractious and even hostile interests. The Institute was established as an experiment with the idea that hidden within fractured environmental debates lay the seeds for many agreements, an approach applied by Mo Udall with unsurpassed ability.

The success of the institute is far greater than we could have imagined. The institute began operations in 1999. Agencies from the Environmental Protection Agency, the Departments of Interior and Agriculture, the U.S. Navy, the Army Corps of Engineers, the Federal Highway Administration, the Federal Energy Regulatory Commission, and others have all called upon the Institute for assistance.

Among its many accomplishments, the Institution has also assisted in facilitating interagency teamwork for the Everglades Task Force which oversees the South Everglades Restoration Project. The U.S. Forest Service requested assistance to bring ranchers and environmental advocates in the southwest to work on grazing and environmental compliance issues. Even Members of Congress have sought the institute's assistance to review implementation of the Nation's fundamental environmental law, the National Environmental Policy Act, to assess how it can be improved using collaborative processes.

The demand on the institute's assistance had been much greater than anticipated. At the time the Institute was created, we did not anticipate the magnitude of the role it would serve to the Federal Government. The institute has served as a mediator between agencies and as an advisor to agency dispute resolution efforts involving overlapping or competing jurisdictions and mandates, developing long-term solutions, training personnel in consensus-building efforts, and designing international systems for preventing or resolving disputes.

This legislation simply extends the authorization for the Institute for an additional 5 years. Support for the institute's service is an investment that will ultimately benefit the taxpayers by preventing costly litigation. I urge my colleagues to support this bill.

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

S. 1902. A bill to limit cost growth associated with major defense base closures and realignments implemented as part of the 2005 round of defense base closure and realignment; to the Committee on Armed Services.

Mr. MENENDEZ. Mr. President, one of the primary goals of the Pentagon's Base Realignment and Closure, BRAC, process is to reduce costs. Unfortunately, we have seen the cost of implementing BRAC balloon out of control. Back in 2005, Congress agreed to implement the recommendations of the BRAC Commission based on the understanding that it would cost the American taxpayers $21 billion, a substantial investment. But now, only two years later, we are looking at a price tag of $30 billion, which is a 43 percent increase.

If costs continue to rise at this rate, we will be looking at even more of a burden on the American taxpayer by the time the base closures and realignments are completed in 2011. In my home State of New Jersey, we are keenly aware of some of the wildly inaccurate cost estimates used in the BRAC process. The closing of New Jersey's army base at Fort Monmouth was originally expected to cost $780 million, now we are looking at a $1.5 billion price tag. Part of this inflated cost is due to the egregious miscalculations on how much it would cost to move the U.S. Military Academy Preparatory School, currently located in New Jersey, to West Point, NY. Although the BRAC Commission's original, one-time implementation cost estimate was $29 million, current estimates put the move at nearly $200 million. Many communities and families will be greatly impacted by the closing of Fort Monmouth and the relocation of the military prep school. Knowing that these decisions were based on miscalculations and misinformation does not sit well with our State, and it should not sit well with taxpayers across the country either. If American families are being forced to foot a bill they weren't expecting, there should be an escape hatch.

That is why I am introducing the BRAC Cost Overruns Protection Act of 2007 or the BRAC COP Act. This legislation will work to control the excessive cost overruns in BRAC and ensure that BRAC is maximizing our taxpayers' money. This bill, which I am introducing with Senator LAUTENBERG, is based on principles found in existing law concerning cost overruns in weapons programs, known as the Nunn-McCurdy amendment. Let me take a few moments to discuss exactly how this legislation will work.

The BRAC COP Act will create a trigger mechanism to require a re-evaluation of any major base closure or realignment should the actual cost exceed BRAC's estimated cost by more than 25 percent. In order to monitor BRAC costs, this bill will require the Secretary of Defense to write biannual reports on the costs of implementing the pending base closure or realignment recommendations mandated by BRAC law. If the secretary determines that the actual cost of implementing a major base closure or realignment recommendation has exceeded the 25 percent threshold, the Defense Secretary will then notify the Chairman and Ranking Member the Congressional Defense Committees and devise a business plan to reduce the cost, without readjusting the baseline estimated cost, so that it does not exceed the 25 percent limit.

The Secretary will then make a recommendation to the President on whether to continue the base closure or realignment. The BRAC COP Act also supports transparency in this process, so if the Defense Secretary recommends that the President continue or modify the base closure or realignment, despite the excessive cost overruns, the Secretary must include an explanation of why it is necessary to continue with these expenditures. After reviewing the Secretary's recommendation, the President will make his own recommendation and submit it to Congress. Just like the congressional procedure for voting on BRAC law, Congress will then have the option to vote to disapprove the President's recommendation.

Let me be clear: this legislation will not overturn BRAC, nor is it intended to re-open the BRAC process. This bill simply asks that the Secretary of Defense, the President, and the Congress take a second look when we face exhorbant cost overruns. The BRAC COP Act will only affect the largest base closures and realignments that are over budget, so we will not be analyzing every single one of the BRAC recommendations.

It is time that the Defense Department is held more accountable for its expenditures. This Congress and the American people do not want to continue providing blank checks so that the Pentagon can rework its accounting tables, regardless of the costs. Congress supported the recommendations of the 2005 BRAC Commission based on the fact that these closures and realignments, although inconvenient, would end up saving money in the long run and addressing the changing requirements of our military. It now appears that cost-benefit analysis has changed. The BRAC COP Act will work to ensure that the 2005 BRAC law, and any future BRAC laws, do not go grossly over budget.

This bill is good for our military and our communities, and I ask my colleagues to support this fiscally responsible legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 283—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES POSTAL SERVICE SHOULD DISCONTINUE THE PRACTICE OF CONTRACTING OUT MAIL DELIVERY SERVICES

Mr. CASEY submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. RES. 283

Whereas letter carriers of the United States Postal Service provide mail delivery

service to over 144,000,000 homes and businesses across the Nation;

Whereas the contracting out of mail delivery services is being increasingly promoted by the Postal Service as a key business strategy for its core function;

Whereas by contracting out letter carrier positions, the Postal Service is bypassing the hiring process that ensures that only qualified people handle America's mail;

Whereas the contracting out of mail delivery services limits the ability of the Postal Service to prevent, investigate, and prosecute mail theft, mail fraud, and other illegal uses of the mail; and

Whereas the protection of our mail delivery services is a vital component of our national security: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Postal Service should discontinue the practice of contracting out mail delivery services.

SENATE RESOLUTION 284—TO AUTHORIZE TESTIMONY AND LEGAL REPRESENTATION IN CITY AND COUNTY OF DENVER V. SUSAN I. GOMEZ, DANIEL R. EGGER, AND CARTER MERRILL

Mr. REID (for himself and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 284

Whereas, in the cases of City and County of Denver v. Susan I Gomez (07GS008693), Daniel R. Egger (07GS008692), and Carter Merrill (07GS967589), pending in Denver County Court in Denver, Colorado, testimony has been requested from Matthew Cheroutes, an employee in the office of Senator Ken Salazar;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved that Matthew Cheroutes and any other employees of Senator Salazar's office from whom testimony may be required are authorized to testify in the cases of City and County of Denver v. Susan I Gomez, Daniel R. Egger, and Carter Merrill, except concerning matters for which a privilege should be asserted.

Sec. 2. The Senate Legal Counsel is authorized to represent Matthew Cheroutes and other employees of Senator Salazar's staff in the actions referenced in section one of this resolution.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2528. Mr. DODD (for himself and Mr. NELSON, of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2528. Mr. DODD (for himself and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title VI, add the following:

SEC. 683. FAMILY LEAVE FOR CAREGIVERS OF MEMBERS OF THE ARMED FORCES.

(a) SERVICEMEMBER FAMILY LEAVE.—

(1) DEFINITIONS.—Section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) COMBAT-RELATED INJURY.—The term 'combat-related injury' means an injury or illness that was incurred (as determined under criteria prescribed by the Secretary of Defense)—

''(A) as a direct result of armed conflict;

''(B) while an individual was engaged in hazardous service;

''(C) in the performance of duty under conditions simulating war; or

''(D) through an instrumentality of war.

''(15) SERVICEMEMBER.—The term 'servicemember' means a member of the Armed Forces.''.

(2) ENTITLEMENT TO LEAVE.—Section 102(a) of such Act (29 U.S.C. 2612(a)) is amended by adding at the end the following:

''(3) SERVICEMEMBER FAMILY LEAVE.—Subject to section 103, an eligible employee who is the primary caregiver for a servicemember with a combat-related injury shall be entitled to a total of 26 workweeks of leave during any 12-month period to care for the servicemember.

''(4) COMBINED LEAVE TOTAL.—An eligible employee shall be entitled to a combined total of 26 workweeks of leave under paragraphs (1) and (3).''.

(3) REQUIREMENTS RELATING TO LEAVE.—

(A) SCHEDULE.—Section 102(b) of such Act (29 U.S.C. 2612(b)) is amended—

(i) in paragraph (1), by inserting after the second sentence the following: ''Subject to paragraph (2), leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule''; and

(ii) in paragraph (2), by inserting ''or subsection (a)(3)'' after ''subsection (a)(1)''.

(B) SUBSTITUTION OF PAID LEAVE.—Section 102(d) of such Act (29 U.S.C. 2612(d)) is amended—

(i) in paragraph (1)—

(I) by inserting ''(or 26 workweeks in the case of leave provided under subsection (a)(3))'' after ''12 workweeks'' the first place it appears; and

(II) by inserting ''(or 26 workweeks, as appropriate)'' after ''12 workweeks'' the second place it appears; and

(ii) in paragraph (2)(B), by adding at the end the following: ''An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection.''.

(C) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

''(3) NOTICE FOR SERVICEMEMBER FAMILY LEAVE.—In any case in which an employee seeks leave under subsection (a)(3), the employee shall provide such notice as is practicable.''.

(D) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

''(f) CERTIFICATION FOR SERVICEMEMBER FAMILY LEAVE.—An employer may require that a request for leave under section 102(a)(3) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe.''.

(E) FAILURE TO RETURN.—Section 104(c) of such Act (29 U.S.C. 2614(c)) is amended—

(i) in paragraph (2)(B)(i), by inserting ''or section 102(a)(3)'' before the semicolon; and

(ii) in paragraph (3)(A)—

(I) in clause (i), by striking ''or'' at the end;

(II) in clause (ii), by striking the period and inserting ''; or''; and

(III) by adding at the end the following:

''(iii) a certification issued by the health care provider of the person for whom the employee is the primary caregiver, in the case of an employee unable to return to work because of a condition specified in section 102(a)(3).''.

(F) ENFORCEMENT.—Section 107 of such Act (29 U.S.C. 2617) is amended, in subsection (a)(1)(A)(i)(II), by inserting ''(or 26 weeks, in a case involving leave under section 102(a)(3))'' after ''12 weeks''.

(G) INSTRUCTIONAL EMPLOYEES.—Section 108 of such Act (29 U.S.C. 2618) is amended, in subsections (c)(1), (d)(2), and (d)(3), by inserting ''or section 102(a)(3)'' after ''section 102(a)(1)''.

(b) SERVICEMEMBER FAMILY LEAVE FOR CIVIL SERVICE EMPLOYEES.—

(1) DEFINITIONS.—Section 6381 of title 5, United States Code, is amended—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the term 'combat-related injury' means an injury or illness that was incurred (as determined under criteria prescribed by the Secretary of Defense)—

''(A) as a direct result of armed conflict;

''(B) while an individual was engaged in hazardous service;

''(C) in the performance of duty under conditions simulating war; or

''(D) through an instrumentality of war; and

''(8) the term 'servicemember' means a member of the Armed Forces.''.

(2) ENTITLEMENT TO LEAVE.—Section 6382(a) of such title is amended by adding at the end the following:

''(3) Subject to section 6383, an employee who is the primary caregiver for a servicemember with a combat-related injury shall be entitled to a total of 26 administrative workweeks of leave during any 12-month period to care for the servicemember.

''(4) An employee shall be entitled to a combined total of 26 administrative workweeks of leave under paragraphs (1) and (3).''.

(3) REQUIREMENTS RELATING TO LEAVE.—

(A) SCHEDULE.—Section 6382(b) of such title is amended—

(i) in paragraph (1), by inserting after the second sentence the following: ''Subject to paragraph (2), leave under subsection (a)(3)

may be taken intermittently or on a reduced leave schedule.''; and

(ii) in paragraph (2), by inserting ''or subsection (a)(3)'' after ''subsection (a)(1)''.

(B) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by adding at the end the following: ''An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection.''.

(C) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following:

''(3) In any case in which an employee seeks leave under subsection (a)(3), the employee shall provide such notice as is practicable.''.

(D) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following:

''(f) An employing agency may require that a request for leave under section 6382(a)(3) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources. The hearing will be held on August 14, 2007, at 9:30 a.m., at the Clovis-Carver Library, North Annex, located at 701 N. Main Street in Clovis, NM.

The purpose of the hearing is to receive testimony on the Bureau of Reclamation's implementation of the Rural Water Supply Act of 2006, and Federal, State, and local efforts to plan and develop the Eastern New Mexico Rural Water Supply Project.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Gina_Weinstock@energy.senate.gov.

For further information, please contact Michael Connor at (202) 224–5479 or Gina Weinstock at (202) 224–5684.

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Evan Eschmeyer and Stacie Milbern of my staff be granted the privilege of the floor for the duration of today's session.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following fellows and interns be granted floor privileges during the consideration of the Children's Health Insurance Bill: Amy Branger, Jennifer Donohue, Eric Willborg, Lindsay Erickson, Davie Lee, Brandon Perkins, Mary Baker, Tom Louthan, Sara Shepherd, Alex Hart, Grace Stephens, Susan Douglas, Diedra Henry-Spires, Elise Stein, Russ Ugone, George Serletis, Neil Ohlenkamp, Suzanne Payne, Jennifer Smith, Avi Salzman.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Tyler Tigges, Anne Freeman, and Lynda Simmons of the Finance Committee staff be given the privilege of the floor during the duration of the debate on H.R. 976.

The PRESIDING OFFICER. Without objection, it is so ordered.

WOUNDED WARRIOR ASSISTANCE ACT OF 2007

On Wednesday, July 25, 2007, the Senate passed H.R. 1538, as amended, as follows:

H.R. 1538

Resolved, That the bill from the House of Representatives (H.R. 1538) entitled ''An Act to amend title 10, United States Code, to improve the management of medical care, personnel actions, and quality of life issues for members of the Armed Forces who are receiving medical care in an outpatient status, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Dignified Treatment of Wounded Warriors Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—WOUNDED WARRIOR MATTERS

Sec. 101. General definitions.

Subtitle A—Policy on Care, Management, and Transition of Servicemembers With Serious Injuries or Illnesses

Sec. 111. Comprehensive policy on care, management, and transition of members of the Armed Forces with serious injuries or illnesses.

Sec. 112. Consideration of needs of women members of the Armed Forces and veterans.

Subtitle B—Health Care

PART I—ENHANCED AVAILABILITY OF CARE FOR SERVICEMEMBERS

Sec. 121. Medical care and other benefits for members and former members of the Armed Forces with severe injuries or illnesses.

Sec. 122. Reimbursement of certain former members of the uniformed services with service-connected disabilities for travel for follow-on specialty care and related services.

PART II—CARE AND SERVICES FOR DEPENDENTS

Sec. 126. Medical care and services and support services for families of members of the Armed Forces recovering from serious injuries or illnesses.

Sec. 127. Extended benefits under TRICARE for primary caregivers of members of the uniformed services who incur a serious injury or illness on active duty.

PART III—TRAUMATIC BRAIN INJURY AND POST-TRAUMATIC STRESS DISORDER

Sec. 131. Comprehensive plans on prevention, diagnosis, mitigation, and treatment of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces.

Sec. 132. Improvement of medical tracking system for members of the Armed Forces deployed overseas.

Sec. 133. Centers of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury and post-traumatic stress disorder.

Sec. 134. Review of mental health services and treatment for female members of the Armed Forces and veterans.

Sec. 135. Funding for improved diagnosis, treatment, and rehabilitation of members of the Armed Forces with traumatic brain injury or post-traumatic stress disorder.

Sec. 136. Reports.

PART IV—OTHER MATTERS

Sec. 141. Joint electronic health record for the Department of Defense and Department of Veterans Affairs.

Sec. 142. Enhanced personnel authorities for the Department of Defense for health care professionals for care and treatment of wounded and injured members of the Armed Forces.

Sec. 143. Personnel shortages in the mental health workforce of the Department of Defense, including personnel in the mental health workforce.

Subtitle C—Disability Matters

PART I—DISABILITY EVALUATIONS

Sec. 151. Utilization of veterans' presumption of sound condition in establishing eligibility of members of the Armed Forces for retirement for disability.

Sec. 152. Requirements and limitations on Department of Defense determinations of disability with respect to members of the Armed Forces.

Sec. 153. Review of separation of members of the Armed Forces separated from service with a disability rating of 20 percent disabled or less.

Sec. 154. Pilot programs on revised and improved disability evaluation system for members of the Armed Forces.

Sec. 155. Reports on Army action plan in response to deficiencies in the Army physical disability evaluation system.

PART II—OTHER DISABILITY MATTERS

Sec. 161. Enhancement of disability severance pay for members of the Armed Forces.

Sec. 162. Traumatic Servicemembers' Group Life Insurance.

Sec. 163. Electronic transfer from the Department of Defense to the Department of Veterans Affairs of documents supporting eligibility for benefits.

Sec. 164. Assessments of temporary disability retired list.

Subtitle D—Improvement of Facilities Housing Patients

Sec. 171. Standards for military medical treatment facilities, specialty medical care facilities, and military quarters housing patients.

Sec. 172. Reports on Army action plan in response to deficiencies identified at Walter Reed Army Medical Center.

Sec. 173. Construction of facilities required for the closure of Walter Reed Army Medical Center, District of Columbia.

Subtitle E—Outreach and Related Information on Benefits

Sec. 181. Handbook for members of the Armed Forces on compensation and benefits available for serious injuries and illnesses.

Subtitle F—Other Matters

Sec. 191. Study on physical and mental health and other readjustment needs of members and former members of the Armed Forces who deployed in Operation Iraqi Freedom and Operation Enduring Freedom and their families.

TITLE II—VETERANS MATTERS

Sec. 201. Sense of Congress on Department of Veterans Affairs efforts in the rehabilitation and reintegration of veterans with traumatic brain injury.

Sec. 202. Individual rehabilitation and community reintegration plans for veterans and others with traumatic brain injury.

Sec. 203. Use of non-Department of Veterans Affairs facilities for implementation of rehabilitation and community reintegration plans for traumatic brain injury.

Sec. 204. Research, education, and clinical care program on severe traumatic brain injury.

Sec. 205. Pilot program on assisted living services for veterans with traumatic brain injury.

Sec. 206. Research on traumatic brain injury.

Sec. 207. Age-appropriate nursing home care.

Sec. 208. Extension of period of eligibility for health care for combat service in the Persian Gulf war or future hostilities.

Sec. 209. Mental health: service-connection status and evaluations for certain veterans.

Sec. 210. Modification of requirements for furnishing outpatient dental services to veterans with a service-connected dental condition or disability.

Sec. 211. Demonstration program on preventing veterans at-risk of homelessness from becoming homeless.

Sec. 212. Clarification of purpose of the outreach services program of the Department of Veterans Affairs.

TITLE III

Sec. 301. Fiscal year 2008 increase in military basic pay.

TITLE I—WOUNDED WARRIOR MATTERS

SEC. 101. GENERAL DEFINITIONS.

In this title:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committees on Armed Services and Veterans' Affairs of the Senate; and

(B) the Committees on Armed Services and Veterans' Affairs of the House of Representatives.

(2) The term ''covered member of the Armed Forces'' means a member of the Armed Forces, including a member of the National Guard or a Reserve, who is undergoing medical treatment, recuperation, or therapy, is otherwise in medical hold or medical holdover status, or is otherwise on the temporary disability retired list for a serious injury or illness.

(3) The term ''family member'', with respect to a member of the Armed Forces or a veteran, has the meaning given that term in section 411h(b) of title 37, United States Code.

(4) The term ''medical hold or medical holdover status'' means—

(A) the status of a member of the Armed Forces, including a member of the National Guard or Reserve, assigned or attached to a military hospital for medical care; and

(B) the status of a member of a reserve component of the Armed Forces who is separated, whether pre-deployment or post-deployment, from the member's unit while in need of health care based on a medical condition identified while the member is on active duty in the Armed Forces.

(5) The term ''serious injury or illness'', in the case of a member of the Armed Forces, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

(6) The term ''TRICARE program'' has the meaning given that term in section 1072(7) of title 10, United States Code.

Subtitle A—Policy on Care, Management, and Transition of Servicemembers With Serious Injuries or Illnesses

SEC. 111. COMPREHENSIVE POLICY ON CARE, MANAGEMENT, AND TRANSITION OF MEMBERS OF THE ARMED FORCES WITH SERIOUS INJURIES OR ILLNESSES.

(a) COMPREHENSIVE POLICY REQUIRED.—

(1) IN GENERAL.—Not later than January 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent feasible, jointly develop and implement a comprehensive policy on the care and management of members of the Armed Forces who are undergoing medical treatment, recuperation, or therapy, are otherwise in medical hold or medical holdover status, or are otherwise on the temporary disability retired list for a serious injury or illness (hereafter in this section referred to as a ''covered servicemembers'').

(2) SCOPE OF POLICY.—The policy shall cover each of the following:

(A) The care and management of covered servicemembers while in medical hold or medical holdover status or on the temporary disability retired list.

(B) The medical evaluation and disability evaluation of covered servicemembers.

(C) The return of covered servicemembers to active duty when appropriate.

(D) The transition of covered servicemembers from receipt of care and services through the Department of Defense to receipt of care and services through the Department of Veterans Affairs.

(3) CONSULTATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall develop the policy in consultation with the heads of other appropriate departments and agencies of the Federal Government and with appropriate non-governmental organizations having an expertise in matters relating to the policy.

(4) UPDATE.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly update the policy on a periodic basis, but not less often than annually, in order to incorporate in the policy, as appropriate, the results of the reviews under subsections (b) and (c) and the best practices identified through pilot programs under section 154.

(b) REVIEW OF CURRENT POLICIES AND PROCEDURES.—

(1) REVIEW REQUIRED.—In developing the policy required by this section, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent necessary, jointly and separately conduct a review of all policies and procedures of the Department of Defense and the Department of Veterans Affairs that apply to, or shall be covered by, the policy.

(2) PURPOSE.—The purpose of the review shall be to identify the most effective and patient-oriented approaches to care and management of covered servicemembers for purposes of—

(A) incorporating such approaches into the policy; and

(B) extending such approaches, where applicable, to care and management of other injured or ill members of the Armed Forces and veterans.

(3) ELEMENTS.—In conducting the review, the Secretary of Defense and the Secretary of Veterans Affairs shall—

(A) identify among the policies and procedures described in paragraph (1) best practices in approaches to the care and management described in that paragraph;

(B) identify among such policies and procedures existing and potential shortfalls in such care and management (including care and management of covered servicemembers on the temporary disability retired list), and determine means of addressing any shortfalls so identified;

(C) determine potential modifications of such policies and procedures in order to ensure consistency and uniformity among the military departments and the regions of the Department of Veterans Affairs in their application and discharge; and

(D) develop recommendations for legislative and administrative action necessary to implement the results of the review.

(4) DEADLINE FOR COMPLETION.—The review shall be completed not later than 90 days after the date of the enactment of this Act.

(c) CONSIDERATION OF FINDINGS, RECOMMENDATIONS, AND PRACTICES.—In developing the policy required by this section, the Secretary of Defense and the Secretary of Veterans Affairs shall take into account the following:

(1) The findings and recommendations of applicable studies, reviews, reports, and evaluations that address matters relating to the policy, including, but not limited, to the following:

(A) The Independent Review Group on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center appointed by the Secretary of Defense.

(B) The Secretary of Veterans Affairs Task Force on Returning Global War on Terror Heroes appointed by the President.

(C) The President's Commission on Care for America's Returning Wounded Warriors.

(D) The Veterans' Disability Benefits Commission established by title XV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1676; 38 U.S.C. 1101 note).

(E) The President's Commission on Veterans' Pensions, of 1956, chaired by General Omar N. Bradley.

(F) The Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance, of 1999, chaired by Anthony J. Principi.

(G) The President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, of March 2003.

(2) The experience and best practices of the Department of Defense and the military departments on matters relating to the policy.

(3) The experience and best practices of the Department of Veterans Affairs on matters relating to the policy.

(4) Such other matters as the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate.

(d) PARTICULAR ELEMENTS OF POLICY.—The policy required by this section shall provide, in particular, the following:

(1) RESPONSIBILITY FOR COVERED SERVICEMEMBERS IN MEDICAL HOLD OR MEDICAL HOLDOVER STATUS OR ON TEMPORARY DISABILITY RETIRED LIST.—Mechanisms to ensure responsibility for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, including the following:

(A) Uniform standards for access of covered servicemembers to non-urgent health care services from the Department of Defense or other providers under the TRICARE program, with such access to be—

(i) for follow-up care, within 2 days of request of care;

(ii) for specialty care, within 3 days of request of care;

(iii) for diagnostic referrals and studies, within 5 days of request; and

(iv) for surgery based on a physician's determination of medical necessity, within 14 days of request.

(B) Requirements for the assignment of adequate numbers of personnel for the purpose of responsibility for and administration of covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list.

(C) Requirements for the assignment of adequate numbers of medical personnel and nonmedical personnel to roles and responsibilities for caring for and administering covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, and a description of the roles and responsibilities of personnel so assigned.

(D) Guidelines for the location of care for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, which guidelines shall address the assignment of such servicemembers to care and residential facilities closest to their duty station or home of record or the location of their designated caregiver at the earliest possible time.

(E) Criteria for work and duty assignments of covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, including a prohibition on the assignment of duty to a servicemember which is incompatible with the servicemember's medical condition.

(F) Guidelines for the provision of care and counseling for eligible family members of covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list.

(G) Requirements for case management of covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, including qualifications for personnel providing such case management.

(H) Requirements for uniform quality of care and administration for all covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, whether members of the regular components of the Armed Forces or members of the reserve components of the Armed Forces.

(I) Standards for the conditions and accessibility of residential facilities for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list who are in outpatient status, and for their immediate family members.

(J) Requirements on the provision of transportation and subsistence for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list, whether in inpatient status or outpatient status, to facilitate obtaining needed medical care and services.

(K) Requirements on the provision of educational and vocational training and rehabilitation opportunities for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list.

(L) Procedures for tracking and informing covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list about medical evaluation board and physical disability evaluation board processing.

(M) Requirements for integrated case management of covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list during their transition from care and treatment through the Department of Defense to care and treatment through the Department of Veterans Affairs.

(N) Requirements and standards for advising and training, as appropriate, family members with respect to care for covered servicemembers in medical hold or medical holdover status or on the temporary disability retired list with serious medical conditions, particularly traumatic brain injury (TBI), burns, and post-traumatic stress disorder (PTSD).

(O) Requirements for periodic reassessments of covered servicemembers, and limits on the length of time such servicemembers may be retained in medical hold or medical holdover status or on the temporary disability retired list.

(P) Requirements to inform covered servicemembers and their family members of their rights and responsibilities while in medical hold or medical holdover status or on the temporary disability retired list.

(Q) The requirement to establish a Department of Defense-wide Ombudsman Office within the Office of the Secretary of Defense to provide oversight of the ombudsman offices in the military departments and policy guidance to such offices with respect to providing assistance to, and answering questions from, covered servicemembers and their families.

(2) MEDICAL EVALUATION AND PHYSICAL DISABILITY EVALUATION FOR COVERED SERVICEMEMBERS.—

(A) MEDICAL EVALUATIONS.—Processes, procedures, and standards for medical evaluations of covered servicemembers, including the following:

(i) Processes for medical evaluations of covered servicemembers that are—

(I) applicable uniformly throughout the military departments; and

(II) applicable uniformly with respect to such servicemembers who are members of the regular components of the Armed Forces and such servicemembers who are members of the National Guard and Reserve.

(ii) Standard criteria and definitions for determining the achievement for covered servicemembers of the maximum medical benefit from treatment and rehabilitation.

(iii) Standard timelines for each of the following:

(I) Determinations of fitness for duty of covered servicemembers.

(II) Specialty consultations for covered servicemembers.

(III) Preparation of medical documents for covered servicemembers.

(IV) Appeals by covered servicemembers of medical evaluation determinations, including determinations of fitness for duty.

(iv) Uniform standards for qualifications and training of medical evaluation board personnel, including physicians, case workers, and physical disability evaluation board liaison officers, in conducting medical evaluations of covered servicemembers.

(v) Standards for the maximum number of medical evaluation cases of covered servicemembers that are pending before a medical evaluation board at any one time, and requirements for the establishment of additional medical evaluation boards in the event such number is exceeded.

(vi) Uniform standards for information for covered servicemembers, and their families, on the medical evaluation board process and the rights and responsibilities of such servicemembers under that process, including a standard handbook on such information.

(B) PHYSICAL DISABILITY EVALUATIONS.—Processes, procedures, and standards for physical disability evaluations of covered servicemembers, including the following:

(i) A non-adversarial process of the Department of Defense and the Department of Veterans Affairs for disability determinations of covered servicemembers.

(ii) To the extent feasible, procedures to eliminate unacceptable discrepancies among disability ratings assigned by the military departments and the Department of Veterans Affairs, particularly in the disability evaluation of covered servicemembers, which procedures shall be subject to the following requirements and limitations:

(I) Such procedures shall apply uniformly with respect to covered servicemembers who are members of the regular components of the Armed Forces and covered servicemembers who are members of the National Guard and Reserve.

(II) Under such procedures, each Secretary of a military department shall, to the extent feasible, utilize the standard schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of such schedule by the United States Court of Appeals for Veterans Claims, in making any determination of disability of a covered servicemember.

(iii) Standard timelines for appeals of determinations of disability of covered servicemembers, including timelines for presentation, consideration, and disposition of appeals.

(iv) Uniform standards for qualifications and training of physical disability evaluation board personnel in conducting physical disability evaluations of covered servicemembers.

(v) Standards for the maximum number of physical disability evaluation cases of covered servicemembers that are pending before a physical disability evaluation board at any one time, and requirements for the establishment of additional physical disability evaluation boards in the event such number is exceeded.

(vi) Procedures for the provision of legal counsel to covered servicemembers while undergoing evaluation by a physical disability evaluation board.

(vii) Uniform standards on the roles and responsibilities of case managers, servicemember advocates, and judge advocates assigned to covered servicemembers undergoing evaluation by a physical disability board, and uniform standards on the maximum number of cases involving such servicemembers that are to be assigned to such managers and advocates.

(C) RETURN OF COVERED SERVICEMEMBERS TO ACTIVE DUTY.—Standards for determinations by the military departments on the return of covered servicemembers to active duty in the Armed Forces.

(D) TRANSITION OF COVERED SERVICEMEMBERS FROM DOD TO VA.—Processes, procedures, and standards for the transition of covered servicemembers from care and treatment by the Department of Defense to care and treatment by the Department of Veterans Affairs before, during, and after separation from the Armed Forces, including the following:

(i) A uniform, patient-focused policy to ensure that the transition occurs without gaps in medical care and the quality of medical care, benefits, and services.

(ii) Procedures for the identification and tracking of covered servicemembers during the transition, and for the coordination of care and treatment of such servicemembers during the transition, including a system of cooperative case management of such servicemembers by the Department of Defense and the Department of Veterans Affairs during the transition.

(iii) Procedures for the notification of Department of Veterans Affairs liaison personnel of the commencement by covered servicemembers of the medical evaluation process and the physical disability evaluation process.

(iv) Procedures and timelines for the enrollment of covered servicemembers in applicable enrollment or application systems of the Department of Veterans with respect to health care, disability, education, vocational rehabilitation, or other benefits.

(v) Procedures to ensure the access of covered servicemembers during the transition to vocational, educational, and rehabilitation benefits available through the Department of Veterans Affairs.

(vi) Standards for the optimal location of Department of Defense and Department of Veterans Affairs liaison and case management personnel at military medical treatment facilities, medical centers, and other medical facilities of the Department of Defense.

(vii) Standards and procedures for integrated medical care and management for covered

servicemembers during the transition, including procedures for the assignment of medical personnel of the Department of Veterans Affairs to Department of Defense facilities to participate in the needs assessments of such servicemembers before, during, and after their separation from military service.

(viii) Standards for the preparation of detailed plans for the transition of covered servicemembers from care and treatment by the Department of Defense to care and treatment by the Department of Veterans Affairs, which plans shall be based on standardized elements with respect to care and treatment requirements and other applicable requirements.

(E) OTHER MATTERS.—The following additional matters with respect to covered servicemembers:

(i) Access by the Department of Veterans Affairs to the military health records of covered servicemembers who are receiving care and treatment, or are anticipating receipt of care and treatment, in Department of Veterans Affairs health care facilities.

(ii) Requirements for utilizing, in appropriate cases, a single physical examination that meets requirements of both the Department of Defense and the Department of Veterans Affairs for covered servicemembers who are being retired, separated, or released from military service.

(iii) Surveys and other mechanisms to measure patient and family satisfaction with the provision by the Department of Defense and the Department of Veterans Affairs of care and services for covered servicemembers, and to facilitate appropriate oversight by supervisory personnel of the provision of such care and services.

(3) REPORT ON REDUCTION IN DISABILITY RATINGS BY THE DEPARTMENT OF DEFENSE.—The Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and House of Representatives on the number of instances in which a disability rating assigned to a member of the Armed Forces by an informal physical evaluation board of the Department of Defense was reduced upon appeal, and the reasons for such reduction. Such report shall cover the period beginning October 7, 2001, and ending September 30, 2006, and shall be submitted to the appropriate committees of Congress by February 1, 2008.

(e) REPORTS.—

(1) REPORT ON POLICY.—Upon the development of the policy required by this section but not later than January 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the policy, including a comprehensive and detailed description of the policy and of the manner in which the policy addresses the findings and recommendations of the reviews under subsections (b) and (c).

(2) REPORTS ON UPDATE.—Upon updating the policy under subsection (a)(4), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the update of the policy, including a comprehensive and detailed description of such update and of the reasons for such update.

(f) COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION.—Not later than six months after the date of the enactment of this Act and every year thereafter, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report setting forth the assessment of the Comptroller General of the progress of the Secretary of Defense and the Secretary of Veterans Affairs in developing and implementing the policy required by this section.

SEC. 112. CONSIDERATION OF NEEDS OF WOMEN MEMBERS OF THE ARMED FORCES AND VETERANS.

(a) IN GENERAL.—In developing and implementing the policy required by section 111, and in otherwise carrying out any other provision of this title or any amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall take into account and fully address any unique specific needs of women members of the Armed Forces and women veterans under such policy or other provision.

(b) REPORTS.—In submitting any report required by this title or an amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent applicable, include a description of the manner in which the matters covered by such report address the unique specific needs of women members of the Armed Forces and women veterans.

Subtitle B—Health Care

PART I—ENHANCED AVAILABILITY OF CARE FOR SERVICEMEMBERS

SEC. 121. MEDICAL CARE AND OTHER BENEFITS FOR MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WITH SEVERE INJURIES OR ILLNESSES.

(a) MEDICAL AND DENTAL CARE FOR MEMBERS AND FORMER MEMBERS.—

(1) IN GENERAL.—Effective as of the date of the enactment of this Act and subject to regulations prescribed by the Secretary of Defense, any covered member of the Armed Forces, and any former member of the Armed Forces, with a severe injury or illness is entitled to medical and dental care in any facility of the uniformed services under section 1074(a) of title 10, United States Code, or through any civilian health care provider authorized by the Secretary to provide health and mental health services to members of the uniformed services, including traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD), as if such member or former member were a member of the uniformed services described in paragraph (2) of such section who is entitled to medical and dental care under such section.

(2) PERIOD OF AUTHORIZED CARE.—(A) Except as provided in subparagraph (B), a member or former member described in paragraph (1) is entitled to care under that paragraph—

(i) in the case of a member or former member whose severe injury or illness concerned is incurred or aggravated during the period beginning on October 7, 2001, and ending on the date of the enactment of this Act, during the three-year period beginning on the date of the enactment of this Act, except that no compensation is payable by reason of this subsection for any period before the date of the enactment of this Act; or

(ii) in the case of a member or former member whose severe injury or illness concerned is incurred or aggravated on or after the date of the enactment of this Act, during the three-year period beginning on the date on which such injury or illness is so incurred or aggravated.

(B) The period of care authorized for a member or former member under this paragraph may be extended by the Secretary concerned for an additional period of up to two years if the Secretary concerned determines that such extension is necessary to assure the maximum feasible recovery and rehabilitation of the member or former member. Any such determination shall be made on a case-by-case basis.

(3) INTEGRATED CARE MANAGEMENT.—The Secretary of Defense shall provide for a program of integrated care management in the provision of care and services under this subsection, which management shall be provided by appropriate medical and case management personnel of the Department of Defense and the Department of Veterans Affairs (as approved by the Secretary of Veterans Affairs) and with appropriate support from the Department of Defense regional health care support contractors.

(4) WAIVER OF LIMITATIONS TO MAXIMIZE CARE.—The Secretary of Defense may, in providing medical and dental care to a member or former member under this subsection during the period referred to in paragraph (2), waive any limitation otherwise applicable under chapter 55 of title 10, United States Code, to the provision of such care to the member or former member if the Secretary considers the waiver appropriate to assure the maximum feasible recovery and rehabilitation of the member or former member.

(5) CONSTRUCTION WITH ELIGIBILITY FOR VETERANS BENEFITS.—Nothing in this subsection shall be construed to reduce, alter, or otherwise affect the eligibility or entitlement of a member or former member of the Armed Forces to any health care, disability, or other benefits to which the member of former member would otherwise be eligible or entitled as a veteran under the laws administered by the Secretary of Veterans Affairs.

(6) SUNSET.—The Secretary of Defense may not provide medical or dental care to a member or former member of the Armed Forces under this subsection after December 31, 2012, if the Secretary has not provided medical or dental care to the member or former member under this subsection before that date.

(b) REHABILITATION AND VOCATIONAL BENEFITS.—

(1) IN GENERAL.—Effective as of the date of the enactment of this Act, a member of the Armed Forces with a severe injury or illness is entitled to such benefits (including rehabilitation and vocational benefits, but not including compensation) from the Secretary of Veterans Affairs to facilitate the recovery and rehabilitation of such member as the Secretary otherwise provides to members of the Armed Forces receiving medical care in medical facilities of the Department of Veterans Affairs facilities in order to facilitate the recovery and rehabilitation of such members.

(2) LIMITATIONS.—The provisions of paragraphs (2) through (6) of subsection (a) shall apply to the provision of benefits under this subsection as if the benefits provided under this subsection were provided under subsection (a).

(3) REIMBURSEMENT.—The Secretary of Defense shall reimburse the Secretary of Veterans Affairs for the cost of any benefits provided under this subsection in accordance with applicable mechanisms for the reimbursement of the Secretary of Veterans Affairs for the provision of medical care to members of the Armed Forces.

(c) RECOVERY OF CERTAIN EXPENSES OF MEDICAL CARE AND RELATED TRAVEL.—

(1) IN GENERAL.—Commencing not later than 60 days after the date of the enactment of this Act, the Secretary of the military department concerned may reimburse covered members of the Armed Forces, and former members of the Armed Forces, with a severe injury or illness for covered expenses incurred by such members or former members, or their family members, in connection with the receipt by such members or former members of medical care that is required for such injury or illness.

(2) COVERED EXPENSES.—Expenses for which reimbursement may be made under paragraph (1) include the following:

(A) Expenses for health care services for which coverage would be provided under section 1074(c) of title 10, United States Code, for members of the uniformed services on active duty.

(B) Expenses of travel of a non-medical attendant who accompanies a member or former member of the Armed Forces for required medical care that is not available to such member or former member locally, if such attendant is appointed for that purpose by a competent medical authority (as determined under regulations prescribed by the Secretary of Defense for purposes of this subsection).

(C) Such other expenses for medical care as the Secretary may prescribe for purposes of this subsection.

(3) AMOUNT OF REIMBURSEMENT.—The amount of reimbursement under paragraph (1) for expenses covered by paragraph (2) shall be determined in accordance with regulations prescribed by the Secretary of Defense for purposes of this subsection.

(d) SEVERE INJURY OR ILLNESS DEFINED.—In this section, the term ''severe injury or illness''

means any serious injury or illness that is assigned a disability rating of 30 percent or higher under the schedule for rating disabilities in use by the Department of Defense.

SEC. 122. REIMBURSEMENT OF CERTAIN FORMER MEMBERS OF THE UNIFORMED SERVICES WITH SERVICE-CONNECTED DISABILITIES FOR TRAVEL FOR FOLLOW-ON SPECIALTY CARE AND RELATED SERVICES.

(a) TRAVEL.—Section 1074i of title 10, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection (b):

''(b) FOLLOW-ON SPECIALTY CARE AND RELATED SERVICES.—In any case in which a former member of a uniformed service who incurred a disability while on active duty in a combat zone or during performance of duty in combat related operations (as designated by the Secretary of Defense), and is entitled to retired or retainer pay, or equivalent pay, requires follow-on specialty care, services, or supplies related to such disability at a specific military treatment facility more than 100 miles from the location in which the former member resides, the Secretary shall provide reimbursement for reasonable travel expenses comparable to those provided under subsection (a) for the former member, and when accompaniment by an adult is determined by competent medical authority to be necessary, for a spouse, parent, or guardian of the former member, or another member of the former member's family who is at least 21 years of age.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect January 1, 2008, and shall apply with respect to travel that occurs on or after that date.

PART II—CARE AND SERVICES FOR DEPENDENTS

SEC. 126. MEDICAL CARE AND SERVICES AND SUPPORT SERVICES FOR FAMILIES OF MEMBERS OF THE ARMED FORCES RECOVERING FROM SERIOUS INJURIES OR ILLNESSES.

(a) MEDICAL CARE.—

(1) IN GENERAL.—A family member of a covered member of the Armed Forces who is not otherwise eligible for medical care at a military medical treatment facility or at medical facilities of the Department of Veterans Affairs shall be eligible for such care at such facilities, on a space-available basis, if the family member is—

(A) on invitational orders while caring for the covered member of the Armed Forces;

(B) a non-medical attendee caring for the covered member of the Armed Forces; or

(C) receiving per diem payments from the Department of Defense while caring for the covered member of the Armed Forces.

(2) SPECIFICATION OF FAMILY MEMBERS.—Notwithstanding section 101(3), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly prescribe in regulations the family members of covered members of the Armed Forces who shall be considered to be a family member of a covered member of the Armed Forces for purposes of paragraph (1).

(3) SPECIFICATION OF CARE.—(A) The Secretary of Defense shall prescribe in regulations the medical care and counseling that shall be available to family members under paragraph (1) at military medical treatment facilities.

(B) The Secretary of Veterans Affairs shall prescribe in regulations the medical care and counseling that shall be available to family members under paragraph (1) at medical facilities of the Department of Veterans Affairs.

(4) RECOVERY OF COSTS.—The United States may recover the costs of the provision of medical care and counseling under paragraph (1) as follows (as applicable):

(A) From third-party payers, in the same manner as the United States may collect costs of the charges of health care provided to covered beneficiaries from third-party payers under section 1095 of title 10, United States Code.

(B) As if such care and counseling was provided under the authority of section 1784 of title 38, United States Code.

(b) JOB PLACEMENT SERVICES.—A family member who is on invitational orders or is a non-medical attendee while caring for a covered member of the Armed Forces for more than 45 days during a one-year period shall be eligible for job placement services otherwise offered by the Department of Defense.

(c) REPORT ON NEED FOR ADDITIONAL SERVICES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the assessment of the Secretary of the need for additional employment services, and of the need for employment protection, of family members described in subsection (b) who are placed on leave from employment or otherwise displaced from employment while caring for a covered member of the Armed Forces as described in that subsection.

SEC. 127. EXTENDED BENEFITS UNDER TRICARE FOR PRIMARY CAREGIVERS OF MEMBERS OF THE UNIFORMED SERVICES WHO INCUR A SERIOUS INJURY OR ILLNESS ON ACTIVE DUTY.

(a) IN GENERAL.—Section 1079(d) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

''(2)(A) Subject to such terms, conditions, and exceptions as the Secretary of Defense considers appropriate, the program of extended benefits for eligible dependents under this subsection shall include extended benefits for the primary caregivers of members of the uniformed services who incur a serious injury or illness on active duty.

''(B) The Secretary of Defense shall prescribe in regulations the individuals who shall be treated as the primary caregivers of a member of the uniformed services for purposes of this paragraph.

''(C) For purposes of this section, a serious injury or illness, with respect to a member of the uniformed services, is an injury or illness that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating and that renders a member of the uniformed services dependant upon a caregiver.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2008.

PART III—TRAUMATIC BRAIN INJURY AND POST-TRAUMATIC STRESS DISORDER

SEC. 131. COMPREHENSIVE PLANS ON PREVENTION, DIAGNOSIS, MITIGATION, AND TREATMENT OF TRAUMATIC BRAIN INJURY AND POST-TRAUMATIC STRESS DISORDER IN MEMBERS OF THE ARMED FORCES.

(a) PLANS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, submit to the congressional defense committees one or more comprehensive plans for programs and activities of the Department of Defense to prevent, diagnose, mitigate, treat, and otherwise respond to traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) in members of the Armed Forces.

(b) ELEMENTS.—Each plan submitted under subsection (a) shall include comprehensive proposals of the Department on the following:

(1) The designation by the Secretary of Defense of a lead agent or executive agent for the Department to coordinate development and implementation of the plan.

(2) The improvement of personnel protective equipment for members of the Armed Forces in order to prevent traumatic brain injury.

(3) The improvement of methods and mechanisms for the detection and treatment of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces in the field.

(4) The requirements for research on traumatic brain injury and post-traumatic stress disorder, including (in particular) research on pharmacological approaches to treatment for traumatic brain injury or post-traumatic stress disorder, as applicable, and the allocation of priorities among such research.

(5) The development, adoption, and deployment of diagnostic criteria for the detection and evaluation of the range of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces, which criteria shall be employed uniformly across the military departments in all applicable circumstances, including provision of clinical care and assessment of future deployability of members of the Armed Forces.

(6) The development and deployment of effective means of assessing traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces, including a system of pre-deployment and post-deployment screenings of cognitive ability in members for the detection of cognitive impairment, as required by the amendments made by section 132.

(7) The development and deployment of effective means of managing and monitoring members of the Armed Forces with traumatic brain injury or post-traumatic stress disorder in the receipt of care for traumatic brain injury or post-traumatic stress disorder, as applicable, including the monitoring and assessment of treatment and outcomes.

(8) The development and deployment of an education and awareness training initiative designed to reduce the negative stigma associated with traumatic brain injury, post-traumatic stress disorder, and mental health treatment.

(9) The provision of education and outreach to families of members of the Armed Forces with traumatic brain injury or post-traumatic stress disorder on a range of matters relating to traumatic brain injury or post-traumatic stress disorder, as applicable, including detection, mitigation, and treatment.

(10) The assessment of the current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces.

(11) The identification of gaps in current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces.

(12) The identification of the resources required for the Department in fiscal years 2009 thru 2013 to address the gaps in capabilities identified under paragraph (11).

(13) The development of joint planning among the Department of Defense, the military departments, and the Department of Veterans Affairs for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces, including planning for the seamless transition of such members from care through the Department of Defense care through the Department of Veterans Affairs.

(14) A requirement that exposure to a blast or blasts be recorded in the records of members of the Armed Forces.

(15) The development of clinical practice guidelines for the diagnosis and treatment of blast injuries in members of the Armed Forces, including, but not limited to, traumatic brain injury.

(16) A program under which each member of the Armed Forces who incurs a traumatic brain injury or post-traumatic stress disorder during service in the Armed Forces—

(A) is enrolled in the program; and

(B) receives, under the program, treatment and rehabilitation meeting a standard of care such that each individual who is a member of the Armed Forces who qualifies for care under the program shall—

(i) be provided the highest quality of care possible based on the medical judgment of qualified medical professionals in facilities that most appropriately meet the specific needs of the individual; and

(ii) be rehabilitated to the fullest extent possible using the most up-to-date medical technology, medical rehabilitation practices, and medical expertise available.

(17) A requirement that if a member of the Armed Forces participating in a program established in accordance with paragraph (16) believes that care provided to such participant does not meet the standard of care specified in subparagraph (B) of such paragraph, the Secretary of Defense shall, upon request of the participant, provide to such participant a referral to another Department of Defense or Department of Veterans Affairs provider of medical or rehabilitative care for a second opinion regarding the care that would meet the standard of care specified in such subparagraph.

(18) The provision of information by the Secretary of Defense to members of the Armed Forces with traumatic brain injury or post-traumatic stress disorder and their families about their rights with respect to the following:

(A) The receipt of medical and mental health care from the Department of Defense and the Department of Veterans Affairs.

(B) The options available to such members for treatment of traumatic brain injury and post-traumatic stress disorder.

(C) The options available to such members for rehabilitation.

(D) The options available to such members for a referral to a public or private provider of medical or rehabilitative care.

(E) The right to administrative review of any decision with respect to the provision of care by the Department of Defense for such members.

(c) COORDINATION IN DEVELOPMENT.—Each plan submitted under subsection (a) shall be developed in coordination with the Secretary of the Army (who was designated by the Secretary of Defense as executive agent for the prevention, mitigation, and treatment of blast injuries under section 256 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3181; 10 U.S.C. 1071 note)).

(d) ADDITIONAL ACTIVITIES.—In carrying out programs and activities for the prevention, diagnosis, mitigation, and treatment of traumatic brain injury and post-traumatic stress disorder in members of the Armed Forces, the Secretary of Defense shall—

(1) examine the results of the recently completed Phase 2 study, funded by the National Institutes of Health, on the use of progesterone for acute traumatic brain injury;

(2) determine if Department of Defense funding for a Phase 3 clinical trial on the use of progesterone for acute traumatic brain injury, or for further research regarding the use of progesterone or its metabolites for treatment of traumatic brain injury, is warranted; and

(3) provide for the collaboration of the Department of Defense, as appropriate, in clinical trials and research on pharmacological approaches to treatment for traumatic brain injury and post-traumatic stress disorder that is conducted by other departments and agencies of the Federal Government.

SEC. 132. IMPROVEMENT OF MEDICAL TRACKING SYSTEM FOR MEMBERS OF THE ARMED FORCES DEPLOYED OVERSEAS.

(a) PROTOCOL FOR ASSESSMENT OF COGNITIVE FUNCTIONING.—

(1) PROTOCOL REQUIRED.—Subsection (b) of section 1074f of title 10, United States Code, is amended—

(A) in paragraph (2), by adding at the end the following new subparagraph:

''(C) An assessment of post-traumatic stress disorder.''; and

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

''(3)(A) The Secretary shall establish for purposes of subparagraphs (B) and (C) of paragraph (2) a protocol for the predeployment assessment and documentation of the cognitive (including memory) functioning of a member who is deployed outside the United States in order to facilitate the assessment of the postdeployment cognitive (including memory) functioning of the member.

''(B) The protocol under subparagraph (A) shall include appropriate mechanisms to permit the differential diagnosis of traumatic brain injury in members returning from deployment in a combat zone.''.

(2) PILOT PROJECTS.—(A) In developing the protocol required by paragraph (3) of section 1074f(b) of title 10, United States Code (as amended by paragraph (1) of this subsection), for purposes of assessments for traumatic brain injury, the Secretary of Defense shall conduct up to three pilot projects to evaluate various mechanisms for use in the protocol for such purposes. One of the mechanisms to be so evaluated shall be a computer-based assessment tool.

(B) Not later than 60 days after the completion of the pilot projects conducted under this paragraph, the Secretary shall submit to the appropriate committees of Congress a report on the pilot projects. The report shall include—

(i) a description of the pilot projects so conducted;

(ii) an assessment of the results of each such pilot project; and

(iii) a description of any mechanisms evaluated under each such pilot project that will incorporated into the protocol.

(C) Not later than 180 days after completion of the pilot projects conducted under this paragraph, the Secretary shall establish a mechanism for implementing any mechanism evaluated under such a pilot project that is selected for incorporation in the protocol.

(D) There is hereby authorized to be appropriated to the Department of Defense, $3,000,000 for the pilot projects authorized by this paragraph. Of the amount so authorized to be appropriated, not more than $1,000,000 shall be available for any particular pilot project.

(b) QUALITY ASSURANCE.—Subsection (d)(2) of section 1074f of title 10, United States Code, is amended by adding at the end the following new subparagraph:

''(F) The diagnosis and treatment of traumatic brain injury and post-traumatic stress disorder.''.

(c) STANDARDS FOR DEPLOYMENT.—Subsection (f) of such section is amended—

(1) in the subsection heading, by striking ''MENTAL HEALTH''; and

(2) in paragraph (2)(B), by striking ''or'' and inserting '', traumatic brain injury, or''.

SEC. 133. CENTERS OF EXCELLENCE IN THE PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF TRAUMATIC BRAIN INJURY AND POST-TRAUMATIC STRESS DISORDER.

(a) CENTER OF EXCELLENCE ON TRAUMATIC BRAIN INJURY.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1105 the following new section:

''§ 1105a. Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Traumatic Brain Injury

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury (TBI), including mild, moderate, and severe traumatic brain injury, to carry out the responsibilities specified in subsection (c). The center shall be known as a 'Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Traumatic Brain Injury'.

''(b) PARTNERSHIPS.—The Secretary shall ensure that the Center collaborates to the maximum extent practicable with the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The Center shall have responsibilities as follows:

''(1) To direct and oversee, based on expert research, the development and implementation of a long-term, comprehensive plan and strategy for the Department of Defense for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of traumatic brain injury.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the armed forces with traumatic brain injury.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of traumatic brain injury.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of traumatic brain injury.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to traumatic brain injury.

''(7) To conduct basic science and translational research on traumatic brain injury for the purposes of understanding the etiology of traumatic brain injury and developing preventive interventions and new treatments.

''(8) To develop outreach strategies and treatments for families of members of the armed forces with traumatic brain injury in order to mitigate the negative impacts of traumatic brain injury on such family members and to support the recovery of such members from traumatic brain injury.

''(9) To conduct research on the unique mental health needs of women members of the armed forces with traumatic brain injury and develop treatments to meet any needs identified through such research.

''(10) To conduct research on the unique mental health needs of ethnic minority members of the armed forces with traumatic brain injury and develop treatments to meet any needs identified through such research.

''(11) To conduct research on the mental health needs of families of members of the armed forces with traumatic brain injury and develop treatments to meet any needs identified through such research.

''(12) To conduct longitudinal studies (using imaging technology and other proven research methods) on members of the armed forces with traumatic brain injury to identify early signs of Alzheimer's disease, Parkinson's disease, or other manifestations of neurodegeneration in such members, which studies should be conducted in coordination with the studies authorized by section 721 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2294) and other studies of the Department of Defense and the Department of Veterans Affairs that address the connection between exposure to combat and the development of Alzheimer's disease, Parkinson's disease, and other neurodegenerative disorders.

''(13) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the needs of members of the armed forces with traumatic brain injury until their transition to care and treatment from the Department of Veterans Affairs.

''(14) To develop a program on comprehensive pain management, including management of acute and chronic pain, to utilize current and develop new treatments for pain, and to identify and disseminate best practices on pain management.

''(15) Such other responsibilities as the Secretary shall specify.''.

(b) CENTER OF EXCELLENCE ON POST-TRAUMATIC STRESS DISORDER.—Chapter 55 of such title is further amended by inserting after section 1105a, as added by subsection (a), the following new section:

''§ 1105b. Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Post-Traumatic Stress Disorder

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder (PTSD), including mild, moderate, and severe post-traumatic stress disorder, to carry out the responsibilities specified in subsection (c). The center shall be known as a 'Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Post-Traumatic Stress Disorder'.

''(b) PARTNERSHIPS.—The Secretary shall ensure that the Center collaborates to the maximum extent practicable with the National Center for Post-Traumatic Stress Disorder of the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The Center shall have responsibilities as follows:

''(1) To direct and oversee, based on expert research, the development and implementation of a long-term, comprehensive plan and strategy for the Department of Defense for the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of post-traumatic stress disorder.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the armed forces with post-traumatic stress disorder.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of post-traumatic stress disorder.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of post-traumatic stress disorder.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to post-traumatic stress disorder.

''(7) To conduct basic science and translational research on post-traumatic stress disorder for the purposes of understanding the etiology of post-traumatic stress disorder and developing preventive interventions and new treatments.

''(8) To develop outreach strategies and treatments for families of members of the armed forces with post-traumatic stress disorder in order to mitigate the negative impacts of traumatic brain injury on such family members and to support the recovery of such members from post-traumatic stress disorder.

''(9) To conduct research on the unique mental health needs of women members of the armed forces, including victims of sexual assault, with post-traumatic stress disorder and develop treatments to meet any needs identified through such research.

''(10) To conduct research on the unique mental health needs of ethnic minority members of the armed forces with post-traumatic stress disorder and develop treatments to meet any needs identified through such research.

''(11) To conduct research on the mental health needs of families of members of the armed forces with post-traumatic stress disorder and develop treatments to meet any needs identified through such research.

''(12) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the needs of members of the armed forces with post-traumatic stress disorder until their transition to care and treatment from the Department of Veterans Affairs.

''(13) To develop a program on comprehensive pain management, including management of acute and chronic pain, to utilize current and develop new treatments for pain, and to identify and disseminate best practices on pain management.

''(14) Such other responsibilities as the Secretary shall specify.''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by inserting after the item relating to section 1105 the following new items:

''1105a. Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Traumatic Brain Injury.

''1105b. Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Post-Traumatic Stress Disorder.''.

(d) REPORT ON ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the establishment of the Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Traumatic Brain Injury required by section 1105a of title 10, United States Code (as added by subsection (a)), and the establishment of the Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Post-Traumatic Stress Disorder required by section 1105b of title 10, United States Code (as added by subsection (b)). The report shall, for each such Center—

(1) describe in detail the activities and proposed activities of such Center; and

(2) assess the progress of such Center in discharging the responsibilities of such Center.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for fiscal year 2008 for the Department of Defense for Defense Health Program, $10,000,000, of which—

(1) $5,000,000 shall be available for the Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Traumatic Brain Injury required by section 1105a of title 10, United States Code; and

(2) $5,000,000 shall be available for the Center of Excellence in Prevention, Diagnosis, Mitigation, Treatment, and Rehabilitation of Post-Traumatic Stress Disorder required by section 1105b of title 10, United States Code.

SEC. 134. REVIEW OF MENTAL HEALTH SERVICES AND TREATMENT FOR FEMALE MEMBERS OF THE ARMED FORCES AND VETERANS.

(a) COMPREHENSIVE REVIEW.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly conduct a comprehensive review of—

(1) the need for mental health treatment and services for female members of the Armed Forces and veterans; and

(2) the efficacy and adequacy of existing mental health treatment programs and services for female members of the Armed Forces and veterans.

(b) ELEMENTS.—The review required by subsection (a) shall include, but not be limited to, an assessment of the following:

(1) The need for mental health outreach, prevention, and treatment services specifically for female members of the Armed Forces and veterans.

(2) The access to and efficacy of existing mental health outreach, prevention, and treatment services and programs (including substance abuse programs) for female veterans who served in a combat zone.

(3) The access to and efficacy of services and treatment for female members of the Armed Forces and veterans who experience post-traumatic stress disorder (PTSD).

(4) The availability of services and treatment for female members of the Armed Forces and veterans who experienced sexual assault or abuse.

(5) The access to and need for treatment facilities focusing on the mental health care needs of female members of the Armed Forces and veterans.

(6) The need for further clinical research on the unique needs of female veterans who served in a combat zone.

(c) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the review required by subsection (a).

(d) POLICY REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop a comprehensive policy to address the treatment and care needs of female members of the Armed Forces and veterans who experience mental health problems and conditions, including post-traumatic stress disorder. The policy shall take into account and reflect the results of the review required by subsection (a).

SEC. 135. FUNDING FOR IMPROVED DIAGNOSIS, TREATMENT, AND REHABILITATION OF MEMBERS OF THE ARMED FORCES WITH TRAUMATIC BRAIN INJURY OR POST-TRAUMATIC STRESS DISORDER.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 2008 for the Department of Defense for Defense Health Program in the amount of $50,000,000, with such amount to be available for activities as follows:

(A) Activities relating to the improved diagnosis, treatment, and rehabilitation of members of the Armed Forces with traumatic brain injury (TBI).

(B) Activities relating to the improved diagnosis, treatment, and rehabilitation of members of the Armed Forces with post-traumatic stress disorder (PTSD).

(2) AVAILABILITY OF AMOUNT.—Of the amount authorized to be appropriated by paragraph (1), $17,000,000 shall be available for the Defense and Veterans Brain Injury Center of the Department of Defense.

(b) SUPPLEMENT NOT SUPPLANT.—The amount authorized to be appropriated by subsection (a)

for Defense Health Program is in addition to any other amounts authorized to be appropriated by this Act for Defense Health Program.

SEC. 136. REPORTS.

(a) REPORTS ON IMPLEMENTATION OF CERTAIN REQUIREMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report describing the progress in implementing the requirements as follows:

(1) The requirements of section 721 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2294), relating to a longitudinal study on traumatic brain injury incurred by members of the Armed Forces in Operation Iraqi Freedom and Operation Enduring Freedom.

(2) The requirements arising from the amendments made by section 738 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (120 Stat. 2303), relating to enhanced mental health screening and services for members of the Armed Forces.

(3) The requirements of section 741 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (120 Stat. 2304), relating to pilot projects on early diagnosis and treatment of post-traumatic stress disorder and other mental health conditions.

(b) ANNUAL REPORTS ON EXPENDITURES FOR ACTIVITIES ON TBI AND PTSD.—

(1) REPORTS REQUIRED.—Not later than March 1, 2008, and each year thereafter through 2013, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the amounts expended by the Department of Defense during the preceding calendar year on activities described in paragraph (2), including the amount allocated during such calendar year to the Defense and Veterans Brain Injury Center of the Department.

(2) COVERED ACTIVITIES.—The activities described in this paragraph are activities as follows:

(A) Activities relating to the improved diagnosis, treatment, and rehabilitation of members of the Armed Forces with traumatic brain injury (TBI).

(B) Activities relating to the improved diagnosis, treatment, and rehabilitation of members of the Armed Forces with post-traumatic stress disorder (PTSD).

(3) ELEMENTS.—Each report under paragraph (1) shall include—

(A) a description of the amounts expended as described in that paragraph, including a description of the activities for which expended;

(B) a description and assessment of the outcome of such activities;

(C) a statement of priorities of the Department in activities relating to the prevention, diagnosis, research, treatment, and rehabilitation of traumatic brain injury in members of the Armed Forces during the year in which such report is submitted and in future calendar years;

(D) a statement of priorities of the Department in activities relating to the prevention, diagnosis, research, treatment, and rehabilitation of post-traumatic stress disorder in members of the Armed Forces during the year in which such report is submitted and in future calendar years; and

(E) an assessment of the progress made toward achieving the priorities stated in subparagraphs (C) and (D) in the report under paragraph (1) in the previous year, and a description of any actions planned during the year in which such report is submitted to achieve any unfulfilled priorities during such year.

PART IV—OTHER MATTERS

SEC. 141. JOINT ELECTRONIC HEALTH RECORD FOR THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly—

(1) develop and implement a joint electronic health record for use by the Department of Defense and the Department of Veterans Affairs; and

(2) accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

(b) DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS INTERAGENCY PROGRAM OFFICE FOR A JOINT ELECTRONIC HEALTH RECORD.—

(1) IN GENERAL.—There is hereby established a joint element of the Department of Defense and the Department of Veterans Affairs to be known as the ''Department of Defense-Department of Veterans Affairs Interagency Program Office for a Joint Electronic Health Record'' (in this section referred to as the ''Office'').

(2) PURPOSES.—The purposes of the Office shall be as follows:

(A) To act as a single point of accountability for the Department of Defense and the Department of Veterans Affairs in the rapid development, test, and implementation of a joint electronic health record for use by the Department of Defense and the Department of Veterans Affairs.

(B) To accelerate the exchange of health care information between Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

(c) LEADERSHIP.—

(1) DIRECTOR.—The Director of the Department of Defense-Department of Veterans Affairs Interagency Program Office for a Joint Electronic Health Record shall be the head of the Office.

(2) DEPUTY DIRECTOR.—The Deputy Director of the Department of Defense-Department of Veterans Affairs Interagency Program Office for a Joint Electronic Health Record shall be the deputy head of the office and shall assist the Director in carrying out the duties of the Director.

(3) APPOINTMENTS.—(A) The Director shall be appointed by the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, from among employees of the Department of Defense and the Department of Veterans Affairs in the Senior Executive Service who are qualified to direct the development and acquisition of major information technology capabilities.

(B) The Deputy Director shall be appointed by the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, from among employees of the Department of Defense and the Department of Veterans Affairs in the Senior Executive Service who are qualified to direct the development and acquisition of major information technology capabilities.

(4) ADDITIONAL GUIDANCE.—In addition to the direction, supervision, and control provided by the Secretary of Defense and the Secretary of Veterans Affairs, the Office shall also receive guidance from the Department of Veterans Affairs-Department of Defense Joint Executive Committee under section 320 of title 38, United States Code, in the discharge of the functions of the Office under this section.

(5) TESTIMONY.—Upon request by any of the appropriate committees of Congress, the Director and the Deputy Director shall testify before such committee regarding the discharge of the functions of the Office under this section.

(d) FUNCTION.—The function of the Office shall be to develop and prepare for deployment, by not later than September 30, 2010, a joint electronic health record to be utilized by both the Department of Defense and the Department of Veterans Affairs in the provision of medical care and treatment to members of the Armed Forces and veterans, which health record shall comply with applicable interoperability standards, implementation specifications, and certification criteria (including for the reporting of quality measures) of the Federal Government.

(e) SCHEDULES AND BENCHMARKS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly establish a schedule and benchmarks for the discharge by the Office of its function under this section, including each of the following:

(1) A schedule for the establishment of the Office.

(2) A schedule and deadline for the establishment of the requirements for the joint electronic health record described in subsection (d), including coordination with the Office of the National Coordinator for Health Information Technology in the development of a nationwide interoperable health information technology infrastructure.

(3) A schedule and associated deadlines for any acquisition and testing required in the development and deployment of the joint electronic health record.

(4) A schedule and associated deadlines and requirements for the deployment of the joint electronic health record.

(5) Proposed funding for the Office for each of fiscal years 2009 through 2013 for the discharge of its function.

(f) PILOT PROJECTS.—

(1) AUTHORITY.—In order to assist the Office in the discharge of its function under this section, the Secretary of Defense and the Secretary of Veterans Affairs may, acting jointly, carry out one or more pilot projects to assess the feasability and advisability of various technological approaches to the achievement of the joint electronic health record described in subsection (d).

(2) TREATMENT AS SINGLE HEALTH CARE SYSTEM.—For purposes of each pilot project carried out under this subsection, the health care system of the Department of Defense and the health care system of the Department of Veterans Affairs shall be treated as a single health care system for purposes of the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(g) STAFF AND OTHER RESOURCES.—

(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall assign to the Office such personnel and other resources of the Department of Defense and the Department of Veterans Affairs as are required for the discharge of its function under this section.

(2) ADDITIONAL SERVICES.—Subject to the approval of the Secretary of Defense and the Secretary of Veterans Affairs, the Director may utilize the services of private individuals and entities as consultants to the Office in the discharge of its function under this section. Amounts available to the Office shall be available for payment for such services.

(h) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than January 1, 2009, and each year thereafter through 2014, the Director shall submit to the Secretary of Defense and the Secretary of Veterans Affairs, and to the appropriate committees of Congress, a report on the activities of the Office during the preceding calendar year. Each report shall include, for the year covered by such report, the following:

(A) A detailed description of the activities of the Office, including a detailed description of the amounts expended and the purposes for which expended.

(B) An assessment of the progress made by the Department of Defense and the Department of Veterans Affairs in the development and implementation of the joint electronic health record described in subsection (d).

(2) AVAILABILITY TO PUBLIC.—The Secretary of Defense and the Secretary of Veterans Affairs shall make available to the public each report submitted under paragraph (1), including by

posting such report on the Internet website of the Department of Defense and the Department of Veterans Affairs, respectively, that is available to the public.

(i) COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION.—Not later than six months after the date of the enactment of this Act and every six months thereafter until the completion of the implementation of the joint electronic health record described in subsection (d), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report setting forth the assessment of the Comptroller General of the progress of the Department of Defense and the Department of Veterans Affairs in developing and implementing the joint electronic health record.

(j) FUNDING.—

(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall each contribute equally to the costs of the Office in fiscal year 2008 and fiscal years thereafter. The amount so contributed by each Secretary in fiscal year 2008 shall be up to $10,000,000.

(2) SOURCE OF FUNDS.—(A) Amounts contributed by the Secretary of Defense under paragraph (1) shall be derived from amounts authorized to be appropriated for the Department of Defense for the Defense Health Program and available for program management and technology resources.

(B) Amounts contributed by the Secretary of Veterans Affairs under paragraph (1) shall be derived from amounts authorized to be appropriated for the Department of Veterans Affairs for Medical Care and available for program management and technology resources.

(k) JOINT ELECTRONIC HEALTH RECORD DEFINED.—In this section, the term ''joint electronic health record'' means a single system that includes patient information across the continuum of medical care, including inpatient care, outpatient care, pharmacy care, patient safety, and rehabilitative care.

SEC. 142. ENHANCED PERSONNEL AUTHORITIES FOR THE DEPARTMENT OF DEFENSE FOR HEALTH CARE PROFESSIONALS FOR CARE AND TREATMENT OF WOUNDED AND INJURED MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Section 1599c of title 10, United States Code, is amended to read as follows:

''§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces

''(a) IN GENERAL.—The Secretary of Defense may, in the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

''(b) RECRUITMENT OF PERSONNEL.—(1) The Secretaries of the military departments shall each develop and implement a strategy to disseminate among appropriate personnel of the military departments authorities and best practices for the recruitment of medical and health professionals, including the authorities under subsection (a).

''(2) Each strategy under paragraph (1) shall—

''(A) assess current recruitment policies, procedures, and practices of the military department concerned to assure that such strategy facilitates the implementation of efficiencies which reduce the time required to fill vacant positions for medical and health professionals; and

''(B) clearly identify processes and actions that will be used to inform and educate military and civilian personnel responsible for the recruitment of medical and health professionals.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by striking the item relating to section 1599c and inserting the following new item:

''1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces.''.

(c) REPORTS ON STRATEGIES ON RECRUITMENT OF MEDICAL AND HEALTH PROFESSIONALS.—Not later than six months after the date of the enactment of this Act, each Secretary of a military department shall submit to the congressional defense committees a report setting forth the strategy developed by such Secretary under section 1599c(b) of title 10, United States Code, as added by subsection (a).

SEC. 143. PERSONNEL SHORTAGES IN THE MENTAL HEALTH WORKFORCE OF THE DEPARTMENT OF DEFENSE, INCLUDING PERSONNEL IN THE MENTAL HEALTH WORKFORCE.

(a) RECOMMENDATIONS ON MEANS OF ADDRESSING SHORTAGES.—

(1) REPORT.—Not later than 45 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the recommendations of the Secretary for such legislative or administrative actions as the Secretary considers appropriate to address shortages in health care professionals within the Department of Defense, including personnel in the mental health workforce.

(2) ELEMENTS.—The report required by paragraph (1) shall address the following:

(A) Enhancements or improvements of financial incentives for health care professionals, including personnel in the mental health workforce, of the Department of Defense in order to enhance the recruitment and retention of such personnel, including recruitment, accession, or retention bonuses and scholarship, tuition, and other financial assistance.

(B) Modifications of service obligations of health care professionals, including personnel in the mental health workforce.

(C) Such other matters as the Secretary considers appropriate.

(b) RECRUITMENT.—Commencing not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall implement programs to recruit qualified individuals in health care fields (including mental health) to serve in the Armed Forces as health care and mental health personnel of the Armed Forces.

Subtitle C—Disability Matters

PART I—DISABILITY EVALUATIONS

SEC. 151. UTILIZATION OF VETERANS' PRESUMPTION OF SOUND CONDITION IN ESTABLISHING ELIGIBILITY OF MEMBERS OF THE ARMED FORCES FOR RETIREMENT FOR DISABILITY.

(a) RETIREMENT OF REGULARS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS.—Clause (i) of section 1201(b)(3)(B) of title 10, United States Code, is amended to read as follows:

''(i) the member has six months or more of active military service and the disability was not noted at the time of the member's entrance on active duty (unless compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty);''.

(b) SEPARATION OF REGULARS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS.—Section 1203(b)(4)(B) of such title is amended by striking ''and the member has at least eight years of service computed under section 1208 of this title'' and inserting '', the member has six months or more of active military service, and the disability was not noted at the time of the member's entrance on active duty (unless evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)''.

SEC. 152. REQUIREMENTS AND LIMITATIONS ON DEPARTMENT OF DEFENSE DETERMINATIONS OF DISABILITY WITH RESPECT TO MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 61 of title 10, United States Code, is amended by inserting after section 1216 the following new section:

''§ 1216a. Determinations of disability: requirements and limitations on determinations

''(a) UTILIZATION OF VA SCHEDULE FOR RATING DISABILITIES IN DETERMINATIONS OF DISABILITY.—(1) In making a determination of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned—

''(A) shall, to the extent feasible, utilize the schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of the schedule by the United States Court of Appeals for Veterans Claims; and

''(B) except as provided in paragraph (2), may not deviate from the schedule or any such interpretation of the schedule.

''(2) In making a determination described in paragraph (1), the Secretary concerned may utilize in lieu of the schedule described in that paragraph such criteria as the Secretary of Defense and the Secretary of Veterans Affairs may jointly prescribe for purposes of this subsection if the utilization of such criteria will result in a determination of a greater percentage of disability than would be otherwise determined through the utilization of the schedule.

''(b) CONSIDERATION OF ALL MEDICAL CONDITIONS.—In making a determination of the rating of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned shall take into account all medical conditions, whether individually or collectively, that render the member unfit to perform the duties of the member's office, grade, rank, or rating.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 61 of such title is amended by inserting after the item relating to section 1216 the following new item:

''1216a. Determinations of disability: requirements and limitations on determinations.''.

SEC. 153. REVIEW OF SEPARATION OF MEMBERS OF THE ARMED FORCES SEPARATED FROM SERVICE WITH A DISABILITY RATING OF 20 PERCENT DISABLED OR LESS.

(a) BOARD REQUIRED.—

(1) IN GENERAL.—Chapter 79 of title 10, United States Code, is amended by inserting after section 1554 adding the following new section:

''§ 1554a. Review of separation with disability rating of 20 percent disabled or less

''(a) IN GENERAL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense a board of review to review the disability determinations of covered individuals by Physical Evaluation Boards. The board shall be known as the 'Physical Disability Board of Review'.

''(2) The Board shall consist of not less than three members appointed by the Secretary.

''(b) COVERED INDIVIDUALS.—For purposes of this section, covered individuals are members and former members of the armed forces who, during the period beginning on September 11, 2001, and ending on December 31, 2009—

''(1) are separated from the armed forces due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and

''(2) are found to be not eligible for retirement.

''(c) REVIEW.—(1) Upon its own motion, or upon the request of a covered individual, or a surviving spouse, next of kin, or legal representative of a covered individual, the Board shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual.

''(2) The review by the Board under paragraph (1) shall be based on the records of the armed force concerned and such other evidence as may be presented to the Board. A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Secretary of Defense.

''(d) AUTHORIZED RECOMMENDATIONS.—The Board may, as a result of its findings under a review under subsection (c), recommend to the Secretary concerned the following (as applicable) with respect to a covered individual:

''(1) No recharacterization of the separation of such individual or modification of the disability rating previously assigned such individual.

''(2) The recharacterization of the separation of such individual to retirement for disability.

''(3) The modification of the disability rating previously assigned such individual by the Physical Evaluation Board concerned, which modified disability rating may not be a reduction of the disability rating previously assigned such individual by that Physical Evaluation Board.

''(4) The issuance of a new disability rating for such individual.

''(e) CORRECTION OF MILITARY RECORDS.—(1) The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the Board under subsection (d). Any such correction may be made effective as of the effective date of the action taken on the report of the Physical Evaluation Board to which such recommendation relates.

''(2) In the case of a member previously separated pursuant to the findings and decision of a Physical Evaluation Board together with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such member would be entitled based on the member's military record as corrected shall be reduced to take into account receipt of such lump-sum or other payment in such manner as the Secretary of Defense considers appropriate.

''(3) If the Board makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.

''(f) REGULATIONS.—(1) This section shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

''(2) The regulations under paragraph (1) shall specify reasonable deadlines for the performance of reviews required by this section.

''(3) The regulations under paragraph (1) shall specify the effect of a determination or pending determination of a Physical Evaluation Board on considerations by boards for correction of military records under section 1552 of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 79 of such title is amended by inserting after the item relating to section 1554 the following new item:

''1554a. Review of separation with disability rating of 20 percent disabled or less.''.

(b) IMPLEMENTATION.—The Secretary of Defense shall establish the board of review required by section 1554a of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by such section, not later than 90 days after the date of the enactment of this Act.

SEC. 154. PILOT PROGRAMS ON REVISED AND IMPROVED DISABILITY EVALUATION SYSTEM FOR MEMBERS OF THE ARMED FORCES.

(a) PILOT PROGRAMS.—

(1) IN GENERAL.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, carry out pilot programs with respect to the disability evaluation system of the Department of Defense for the purpose set forth in subsection (d).

(2) REQUIRED PILOT PROGRAMS.—In carrying out this section, the Secretary of Defense shall carry out the pilot programs described in paragraphs (1) through (3) of subsection (c). Each such pilot program shall be implemented not later than 90 days after the date of the enactment of this Act.

(3) AUTHORIZED PILOT PROGRAMS.—In carrying out this section, the Secretary of Defense may carry out such other pilot programs as the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, considers appropriate.

(b) DISABILITY EVALUATION SYSTEM OF THE DEPARTMENT OF DEFENSE.—For purposes of this section, the disability evaluation system of the Department of Defense is the system of the Department for the evaluation of the disabilities of members of the Armed Forces who are being separated or retired from the Armed Forces for disability under chapter 61 of title 10, United States Code.

(c) SCOPE OF PILOT PROGRAMS.—

(1) DISABILITY DETERMINATIONS BY DOD UTILIZING VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs under subsection (a), for purposes of making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, upon a determination by the Secretary of the military department concerned that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

(A) the Secretary of Veterans Affairs shall—

(i) conduct an evaluation of the member for physical disability; and

(ii) assign the member a rating of disability in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

(B) the Secretary of the military department concerned shall make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A)(ii).

(2) DISABILITY DETERMINATIONS UTILIZING JOINT DOD/VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs under subsection (a), in making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, the Secretary of the military department concerned shall, upon determining that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

(A) provide for the joint evaluation of the member for disability by the Secretary of the military department concerned and the Secretary of Veterans Affairs, including the assignment of a rating of disability for the member in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

(B) make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A).

(3) ELECTRONIC CLEARING HOUSE.—Under one of the pilot programs, the Secretary of Defense shall establish and operate a single Internet website for the disability evaluation system of the Department of Defense that enables participating members of the Armed Forces to fully utilize such system through the Internet, with such Internet website to include the following:

(A) The availability of any forms required for the utilization of the disability evaluation system by members of the Armed Forces under the system.

(B) Secure mechanisms for the submission of such forms by members of the Armed Forces under the system, and for the tracking of the acceptance and review of any forms so submitted.

(C) Secure mechanisms for advising members of the Armed Forces under the system of any additional information, forms, or other items that are required for the acceptance and review of any forms so submitted.

(D) The continuous availability of assistance to members of the Armed Forces under the system (including assistance through the caseworkers assigned to such members of the Armed Forces) in submitting and tracking such forms, including assistance in obtaining information, forms, or other items described by subparagraph (C).

(E) Secure mechanisms to request and receive personnel files or other personnel records of members of the Armed Forces under the system that are required for submission under the disability evaluation system, including the capability to track requests for such files or records and to determine the status of such requests and of responses to such requests.

(4) OTHER PILOT PROGRAMS.—Under any pilot program carried out by the Secretary of Defense under subsection (a)(3), the Secretary shall provide for the development, evaluation, and identification of such practices and procedures under the disability evaluation system of the Department of Defense as the Secretary considers appropriate for purpose set forth in subsection (d).

(d) PURPOSE.—The purpose of each pilot program under subsection (a) shall be—

(1) to provide for the development, evaluation, and identification of revised and improved practices and procedures under the disability evaluation system of the Department of Defense in order to—

(A) reduce the processing time under the disability evaluation system of members of the Armed Forces who are likely to be retired or separated for disability, and who have not requested continuation on active duty, including, in particular, members who are severely wounded;

(B) identify and implement or seek the modification of statutory or administrative policies and requirements applicable to the disability evaluation system that—

(i) are unnecessary or contrary to applicable best practices of civilian employers and civilian healthcare systems; or

(ii) otherwise result in hardship, arbitrary, or inconsistent outcomes for members of the Armed Forces, or unwarranted inefficiencies and delays;

(C) eliminate material variations in policies, interpretations, and overall performance standards among the military departments under the disability evaluation system; and

(D) determine whether it enhances the capability of the Department of Veterans Affairs to receive and determine claims from members of the Armed Forces for compensation, pension, hospitalization, or other veterans benefits; and

(2) in conjunction with the findings and recommendations of applicable Presidential and Department of Defense study groups, to provide for the eventual development of revised and improved practices and procedures for the disability evaluation system in order to achieve the objectives set forth in paragraph (1).

(e) UTILIZATION OF RESULTS IN UPDATES OF COMPREHENSIVE POLICY ON CARE, MANAGEMENT, AND TRANSITION OF COVERED SERVICEMEMBERS.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly incorporate responses to any findings and recommendations arising under the pilot programs required by subsection (a) in updating the comprehensive policy on the care and management of covered servicemembers under section 111.

(f) CONSTRUCTION WITH OTHER AUTHORITIES.—

(1) IN GENERAL.—Subject to paragraph (2), in carrying out a pilot program under subsection (a)—

(A) the rules and regulations of the Department of Defense and the Department of Veterans Affairs relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces shall apply to the pilot program only to the extent provided in the report on the pilot program under subsection (h)(1); and

(B) the Secretary of Defense and the Secretary of Veterans Affairs may waive any provision of title 10, 37, or 38, United States Code, relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces if the Secretaries determine in writing that the application of such provision would be inconsistent with the purpose of the pilot program.

(2) LIMITATION.—Nothing in paragraph (1) shall be construed to authorize the waiver of any provision of section 1216a of title 10, United States Code, as added by section 152 of this Act.

(g) DURATION.—Each pilot program under subsection (a) shall be completed not later than one year after the date of the commencement of such pilot program under that subsection.

(h) REPORTS.—

(1) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the pilot programs under subsection (a). The report shall include—

(A) a description of the scope and objectives of each pilot program;

(B) a description of the methodology to be used under such pilot program to ensure rapid identification under such pilot program of revised or improved practices under the disability evaluation system of the Department of Defense in order to achieve the objectives set forth in subsection (d)(1); and

(C) a statement of any provision described in subsection (f)(1)(B) that shall not apply to the pilot program by reason of a waiver under that subsection.

(2) INTERIM REPORT.—Not later than 150 days after the date of the submittal of the report required by paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report describing the current status of such pilot program.

(3) FINAL REPORT.—Not later than 90 days after the completion of all the pilot programs described in paragraphs (1) through (3) of subsection (c), the Secretary shall submit to the appropriate committees of Congress a report setting forth a final evaluation and assessment of such pilot programs. The report shall include such recommendations for legislative or administrative action as the Secretary considers appropriate in light of such pilot programs.

SEC. 155. REPORTS ON ARMY ACTION PLAN IN RESPONSE TO DEFICIENCIES IN THE ARMY PHYSICAL DISABILITY EVALUATION SYSTEM.

(a) REPORTS REQUIRED.—Not later than 30 days after the date of the enactment of this Act, and every 120 days thereafter until March 1, 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of corrective measures by the Department of Defense with respect to the Physical Disability Evaluation System (PDES) in response to the following:

(1) The report of the Inspector General of the Army on that system of March 6, 2007.

(2) The report of the Independent Review Group on Rehabilitation Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center.

(3) The report of the Department of Veterans Affairs Task Force on Returning Global War on Terror Heroes.

(b) ELEMENTS OF REPORT.—Each report under subsection (a) shall include current information on the following:

(1) The total number of cases, and the number of cases involving combat disabled servicemembers, pending resolution before the Medical and Physical Disability Evaluation Boards of the Army, including information on the number of members of the Army who have been in a medical hold or holdover status for more than each of 100, 200, and 300 days.

(2) The status of the implementation of modifications to disability evaluation processes of the Department of Defense in response to the following:

(A) The report of the Inspector General on such processes dated March 6, 2007.

(B) The report of the Independent Review Group on Rehabilitation Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center.

(C) The report of the Department of Veterans Affairs Task Force on Returning Global War on Terror Heroes.

(c) POSTING ON INTERNET.—Not later than 24 hours after submitting a report under subsection (a), the Secretary shall post such report on the Internet website of the Department of Defense that is available to the public.

PART II—OTHER DISABILITY MATTERS

SEC. 161. ENHANCEMENT OF DISABILITY SEVERANCE PAY FOR MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Section 1212 of title 10, United States Code, is amended—

(1) in subsection (a)(1), by striking ''his years of service, but not more than 12, computed under section 1208 of this title'' in the matter preceding subparagraph (A) and inserting ''the member's years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c))'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

''(c)(1) The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

''(A) Six years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone (as designated by the Secretary of Defense for purposes of this subsection) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

''(B) Three years in the case of any other member.

''(2) The maximum years of service of a member for purposes of subsection (a)(1) shall be 19 years.''.

(b) NO DEDUCTION FROM COMPENSATION OF SEVERANCE PAY FOR DISABILITIES INCURRED IN COMBAT ZONES.—Subsection (d) of such section, as redesignated by subsection (a)(2) of this section, is further amended—

(1) by inserting ''(1)'' after ''(d)'';

(2) by striking the second sentence; and

(3) by adding at the end the following new paragraphs:

''(2) No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

''(3) No deduction may be made under paragraph (1) from any death compensation to which a member's dependents become entitled after the member's death.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply with respect to members of the Armed Forces separated from the Armed Forces under chapter 61 of title 10, United States Code, on or after that date.

SEC. 162. TRAUMATIC SERVICEMEMBERS' GROUP LIFE INSURANCE.

(a) DESIGNATION OF FIDUCIARY FOR MEMBERS WITH LOST MENTAL CAPACITY OR EXTENDED LOSS OF CONSCIOUSNESS.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, develop a form for the designation of a recipient for the funds distributed under section 1980A of title 38, United States Code, as the fiduciary of a member of the Armed Forces in cases where the member is medically incapacitated (as determined by the Secretary of Defense in consultation with the Secretary of Veterans Affairs) or experiencing an extended loss of consciousness.

(b) ELEMENTS.—The form under subsection (a) shall require that a member may elect that—

(1) an individual designated by the member be the recipient as the fiduciary of the member; or

(2) a court of proper jurisdiction determine the recipient as the fiduciary of the member for purposes of this subsection.

(c) COMPLETION AND UPDATE.—The form under subsection (a) shall be completed by an individual at the time of entry into the Armed Forces and updated periodically thereafter.

SEC. 163. ELECTRONIC TRANSFER FROM THE DEPARTMENT OF DEFENSE TO THE DEPARTMENT OF VETERANS AFFAIRS OF DOCUMENTS SUPPORTING ELIGIBILITY FOR BENEFITS.

The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop and implement a mechanism to provide for the electronic transfer from the Department of Defense to the Department of Veterans Affairs of any Department of Defense documents (including Department of Defense form DD–214) necessary to establish or support the eligibility of a member of the Armed Forces for benefits under the laws administered by the Secretary of Veterans Affairs at the time of the retirement, separation, or release of the member from the Armed Forces.

SEC. 164. ASSESSMENTS OF TEMPORARY DISABILITY RETIRED LIST.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Comptroller General of the United States shall each submit to the congressional defense committees a report assessing the continuing utility of the temporary disability retired list in satisfying the purposes for which the temporary disability retired list was established. Each report shall include such recommendations for the modification or improvement of the temporary disability retired list as the Secretary or the Comptroller General, as applicable, considers appropriate in light of the assessment in such report.

Subtitle D—Improvement of Facilities Housing Patients

SEC. 171. STANDARDS FOR MILITARY MEDICAL TREATMENT FACILITIES, SPECIALTY MEDICAL CARE FACILITIES, AND MILITARY QUARTERS HOUSING PATIENTS.

(a) ESTABLISHMENT OF STANDARDS.—The Secretary of Defense shall establish for the military facilities referred to in subsection (b) standards with respect to the matters set forth in subsection (c). The standards shall, to the maximum extent practicable—

(1) be uniform and consistent across such facilities; and

(2) be uniform and consistent across the Department of Defense and the military departments.

(b) COVERED MILITARY FACILITIES.—The military facilities referred to in this subsection are the military facilities of the Department of Defense and the military departments as follows:

(1) Military medical treatment facilities.

(2) Specialty medical care facilities.

(3) Military quarters or leased housing for patients.

(c) SCOPE OF STANDARDS.—The standards required by subsection (a) shall include the following:

(1) Generally accepted standards for the accreditation of medical facilities, or for facilities used to quarter individuals that may require medical supervision, as applicable, in the United States.

(2) To the extent not inconsistent with the standards described in paragraph (1), minimally acceptable conditions for the following:

(A) Appearance and maintenance of facilities generally, including the structure and roofs of facilities.

(B) Size, appearance, and maintenance of rooms housing or utilized by patients, including furniture and amenities in such rooms.

(C) Operation and maintenance of primary and back-up facility utility systems and other systems required for patient care, including electrical systems, plumbing systems, heating, ventilation, and air conditioning systems, communications systems, fire protection systems, energy management systems, and other systems required for patient care.

(D) Compliance with Federal Government standards for hospital facilities and operations.

(E) Compliance of facilities, rooms, and grounds, to the maximum extent practicable, with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(F) Such other matters relating to the appearance, size, operation, and maintenance of facilities and rooms as the Secretary considers appropriate.

(d) COMPLIANCE WITH STANDARDS.—

(1) DEADLINE.—In establishing standards under subsection (a), the Secretary shall specify a deadline for compliance with such standards by each facility referred to in subsection (b). The deadline shall be at the earliest date practicable after the date of the enactment of this Act, and shall, to the maximum extent practicable, be uniform across the facilities referred to in subsection (b).

(2) INVESTMENT.—In carrying out this section, the Secretary shall also establish guidelines for investment to be utilized by the Department of Defense and the military departments in determining the allocation of financial resources to facilities referred to in subsection (b) in order to meet the deadline specified under paragraph (1).

(e) REPORT.—

(1) IN GENERAL.—Not later than December 30, 2007, the Secretary shall submit to the congressional defense committees a report on the actions taken to carry out this section.

(2) ELEMENTS.—The report under paragraph (1) shall include the following:

(A) The standards established under subsection (a).

(B) An assessment of the appearance, condition, and maintenance of each facility referred to in subsection (a), including—

(i) an assessment of the compliance of such facility with the standards established under subsection (a); and

(ii) a description of any deficiency or noncompliance in each facility with the standards.

(C) A description of the investment to be allocated to address each deficiency or noncompliance identified under subparagraph (B)(ii).

SEC. 172. REPORTS ON ARMY ACTION PLAN IN RESPONSE TO DEFICIENCIES IDENTIFIED AT WALTER REED ARMY MEDICAL CENTER.

(a) REPORTS REQUIRED.—Not later than 30 days after the date of the enactment of this Act, and every 120 days thereafter until March 1, 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of the action plan of the Army to correct deficiencies identified in the condition of facilities, and in the administration of outpatients in medical hold or medical holdover status, at Walter Reed Army Medical Center (WRAMC) and at other applicable Army installations at which covered members of the Armed Forces are assigned.

(b) ELEMENTS OF REPORT.—Each report under subsection (a) shall include current information on the following:

(1) The number of inpatients at Walter Reed Army Medical Center, and the number of outpatients on medical hold or in a medical holdover status at Walter Reed Army Medical Center, as a result of serious injuries or illnesses.

(2) A description of the lodging facilities and other forms of housing at Walter Reed Army Medical Center, and at each other Army facility, to which are assigned personnel in medical hold or medical holdover status as a result of serious injuries or illnesses, including—

(A) an assessment of the conditions of such facilities and housing; and

(B) a description of any plans to correct inadequacies in such conditions.

(3) The status, estimated completion date, and estimated cost of any proposed or ongoing actions to correct any inadequacies in conditions as described under paragraph (2).

(4) The number of case managers, platoon sergeants, patient advocates, and physical evaluation board liaison officers stationed at Walter Reed Army Medical Center, and at each other Army facility, to which are assigned personnel in medical hold or medical holdover status as a result of serious injuries or illnesses, and the ratio of case workers and platoon sergeants to outpatients for whom they are responsible at each such facility.

(5) The number of telephone calls received during the preceding 60 days on the Wounded Soldier and Family hotline (as established on March 19, 2007), a summary of the complaints or communications received through such calls, and a description of the actions taken in response to such calls.

(6) A summary of the activities, findings, and recommendations of the Army tiger team of medical and installation professionals who visited the major medical treatment facilities and community-based health care organizations of the Army pursuant to March 2007 orders, and a description of the status of corrective actions being taken with to address deficiencies noted by that team.

(7) The status of the ombudsman programs at Walter Reed Army Medical Center and at other major Army installations to which are assigned personnel in medical hold or medical holdover status as a result of serious injuries or illnesses.

(c) POSTING ON INTERNET.—Not later than 24 hours after submitting a report under subsection (a), the Secretary shall post such report on the Internet website of the Department of Defense that is available to the public.

SEC. 173. CONSTRUCTION OF FACILITIES REQUIRED FOR THE CLOSURE OF WALTER REED ARMY MEDICAL CENTER, DISTRICT OF COLUMBIA.

(a) ASSESSMENT OF ACCELERATION OF CONSTRUCTION OF FACILITIES.—The Secretary of Defense shall carry out an assessment of the feasibility (including the cost-effectiveness) of accelerating the construction and completion of any new facilities required to facilitate the closure of Walter Reed Army Medical Center, District of Columbia, as required as a result of the 2005 round of defense base closure and realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; U.S.C. 2687 note).

(b) DEVELOPMENT AND IMPLEMENTATION OF PLAN FOR CONSTRUCTION OF FACILITIES.—

(1) IN GENERAL.—The Secretary shall develop and carry out a plan for the construction and completion of any new facilities required to facilitate the closure of Walter Reed Army Medical Center as required as described in subsection (a). If the Secretary determines as a result of the assessment under subsection (a) that accelerating the construction and completion of such facilities is feasible, the plan shall provide for the accelerated construction and completion of such facilities in a manner consistent with that determination.

(2) SUBMITTAL OF PLAN.—The Secretary shall submit to the congressional defense committees the plan required by paragraph (1) not later than September 30, 2007.

(c) CERTIFICATIONS.—Not later than September 30, 2007, the Secretary shall submit to the congressional defense committees a certification of each of the following:

(1) That a transition plan has been developed, and resources have been committed, to ensure that patient care services, medical operations, and facilities are sustained at the highest possible level at Walter Reed Army Medical Center until facilities to replace Walter Reed Army Medical Center are staffed and ready to assume at least the same level of care previously provided at Walter Reed Army Medical Center.

(2) That the closure of Walter Reed Army Medical Center will not result in a net loss of capacity in the major military medical centers in the National Capitol Region in terms of total bed capacity or staffed bed capacity.

(3) That the capacity and types of medical hold and out-patient lodging facilities currently operating at Walter Reed Army Medical Center will be available at the facilities to replace Walter Reed Army Medical Center by the date of the closure of Walter Reed Army Medical Center.

(4) That adequate funds have been provided to complete fully all facilities identified in the Base Realignment and Closure Business Plan for Walter Reed Army Medical Center submitted to the congressional defense committees as part of the budget justification materials submitted to Congress together with the budget of the President for fiscal year 2008 as contemplated in that business plan.

(d) ENVIRONMENTAL LAWS.—Nothing in this section shall require the Secretary or any designated representative to waive or ignore responsibilities and actions required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such Act.

Subtitle E—Outreach and Related Information on Benefits

SEC. 181. HANDBOOK FOR MEMBERS OF THE ARMED FORCES ON COMPENSATION AND BENEFITS AVAILABLE FOR SERIOUS INJURIES AND ILLNESSES.

(a) INFORMATION ON AVAILABLE COMPENSATION AND BENEFITS.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, the Secretary of

Health and Human Services, and the Commissioner of Social Security, develop and maintain in handbook and electronic form a comprehensive description of the compensation and other benefits to which a member of the Armed Forces, and the family of such member, would be entitled upon the member's separation or retirement from the Armed Forces as a result of a serious injury or illness. The handbook shall set forth the range of such compensation and benefits based on grade, length of service, degree of disability at separation or retirement, and such other factors affecting such compensation and benefits as the Secretary of Defense considers appropriate.

(b) UPDATE.—The Secretary of Defense shall update the comprehensive description required by subsection (a), including the handbook and electronic form of the description, on a periodic basis, but not less often than annually.

(c) PROVISION TO MEMBERS.—The Secretary of the military department concerned shall provide the descriptive handbook under subsection (a) to each member of the Armed Forces described in that subsection as soon as practicable following the injury or illness qualifying the member for coverage under that subsection.

(d) PROVISION TO REPRESENTATIVES.—If a member is incapacitated or otherwise unable to receive the descriptive handbook to be provided under subsection (a), the handbook shall be provided to the next of kin or a legal representative of the member (as determined in accordance with regulations prescribed by the Secretary of the military department concerned for purposes of this section).

Subtitle F—Other Matters

SEC. 191. STUDY ON PHYSICAL AND MENTAL HEALTH AND OTHER READJUSTMENT NEEDS OF MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WHO DEPLOYED IN OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM AND THEIR FAMILIES.

(a) STUDY REQUIRED.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, enter into an agreement with the National Academy of Sciences for a study on the physical and mental health and other readjustment needs of members and former members of the Armed Forces who deployed in Operation Iraqi Freedom or Operation Enduring Freedom and their families as a result of such deployment.

(b) PHASES.—The study required under subsection (a) shall consist of two phases:

(1) A preliminary phase, to be completed not later than 180 days after the date of the enactment of this Act—

(A) to identify preliminary findings on the physical and mental health and other readjustment needs described in subsection (a) and on gaps in care for the members, former members, and families described in that subsection; and

(B) to determine the parameters of the second phase of the study under paragraph (2).

(2) A second phase, to be completed not later than three years after the date of the enactment of this Act, to carry out a comprehensive assessment, in accordance with the parameters identified under the preliminary report required by paragraph (1), of the physical and mental health and other readjustment needs of members and former members of the Armed Forces who deployed in Operation Iraqi Freedom or Operation Enduring Freedom and their families as a result of such deployment, including, at a minimum—

(A) an assessment of the psychological, social, and economic impacts of such deployment on such members and former members and their families;

(B) an assessment of the particular impacts of multiple deployments in Operation Iraqi Freedom or Operation Enduring Freedom on such members and former members and their families;

(C) an assessment of the full scope of the neurological, psychiatric, and psychological effects of traumatic brain injury (TBI) on members and former members of the Armed Forces, including the effects of such effects on the family members of such members and former members, and an assessment of the efficacy of current treatment approaches for traumatic brain injury in the United States and the efficacy of screenings and treatment approaches for traumatic brain injury within the Department of Defense and the Department of Veterans Affairs;

(D) an assessment of the effects of undiagnosed injuries such as post-traumatic stress disorder (PTSD) and traumatic brain injury, an estimate of the long-term costs associated with such injuries, and an assessment of the efficacy of screenings and treatment approaches for post-traumatic stress disorder and other mental health conditions within the Department of Defense and Department of Veterans Affairs;

(E) an assessment of the particular needs and concerns of female members of the Armed Forces and female veterans;

(F) an assessment of the particular needs and concerns of children of members of the Armed Forces, taking into account differing age groups, impacts on development and education, and the mental and emotional well being of children;

(G) an assessment of the particular needs and concerns of minority members of the Armed Forces and minority veterans;

(H) an assessment of the particular educational and vocational needs of such members and former members and their families, and an assessment of the efficacy of existing educational and vocational programs to address such needs;

(I) an assessment of the impacts on communities with high populations of military families, including military housing communities and townships with deployed members of the National Guard and Reserve, of deployments associated with Operation Iraqi Freedom and Operation Enduring Freedom, and an assessment of the efficacy of programs that address community outreach and education concerning military deployments of community residents;

(J) an assessment of the impacts of increasing numbers of older and married members of the Armed Forces on readjustment requirements;

(K) the development, based on such assessments, of recommendations for programs, treatments, or policy remedies targeted at preventing, minimizing or addressing the impacts, gaps and needs identified; and

(L) the development, based on such assessments, of recommendations for additional research on such needs.

(c) POPULATIONS TO BE STUDIED.—The study required under subsection (a) shall consider the readjustment needs of each population of individuals as follows:

(1) Members of the regular components of the Armed Forces who are returning, or have returned, to the United States from deployment in Operation Iraqi Freedom or Operation Enduring Freedom.

(2) Members of the National Guard and Reserve who are returning, or have returned, to the United States from deployment in Operation Iraqi Freedom or Operation Enduring Freedom.

(3) Veterans of Operation Iraqi Freedom or Operation Enduring Freedom.

(4) Family members of the members and veterans described in paragraphs (1) through (3).

(d) ACCESS TO INFORMATION.—The National Academy of Sciences shall have access to such personnel, information, records, and systems of the Department of Defense and the Department of Veterans Affairs as the National Academy of Sciences requires in order to carry out the study required under subsection (a).

(e) PRIVACY OF INFORMATION.—The National Academy of Sciences shall maintain any personally identifiable information accessed by the Academy in carrying out the study required under subsection (a) in accordance with all applicable laws, protections, and best practices regarding the privacy of such information, and may not permit access to such information by any persons or entities not engaged in work under the study.

(f) REPORTS BY NATIONAL ACADEMY OF SCIENCES.—Upon the completion of each phase of the study required under subsection (a), the National Academy of Sciences shall submit to the Secretary of Defense and the Secretary of Veterans Affairs a report on such phase of the study.

(g) DOD AND VA RESPONSE TO NAS REPORTS.—

(1) PRELIMINARY RESPONSE.—Not later than 45 days after the receipt of a report under subsection (f) on each phase of the study required under subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop a preliminary joint Department of Defense-Department of Veterans Affairs plan to address the findings and recommendations of the National Academy of Sciences contained in such report. The preliminary plan shall provide preliminary proposals on the matters set forth in paragraph (3).

(2) FINAL RESPONSE.—Not later than 90 days after the receipt of a report under subsection (f) on each phase of the study required under subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop a final joint Department of Defense-Department of Veterans Affairs plan to address the findings and recommendations of the National Academy of Sciences contained in such report. The final plan shall provide final proposals on the matters set forth in paragraph (3).

(3) COVERED MATTERS.—The matters set forth in this paragraph with respect to a phase of the study required under subsection (a) are as follows:

(A) Modifications of policy or practice within the Department of Defense and the Department of Veterans Affairs that are necessary to address gaps in care or services as identified by the National Academy of Sciences under such phase of the study.

(B) Modifications of policy or practice within the Department of Defense and the Department of Veterans Affairs that are necessary to address recommendations made by the National Academy of Sciences under such phase of the study.

(C) An estimate of the costs of implementing the modifications set forth under subparagraphs (A) and (B), set forth by fiscal year for at least the first five fiscal years beginning after the date of the plan concerned.

(4) REPORTS ON RESPONSES.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report setting forth each joint plan developed under paragraphs (1) and (2).

(5) PUBLIC AVAILABILITY OF RESPONSES.—The Secretary of Defense and the Secretary of Veterans Affairs shall each make available to the public each report submitted to Congress under paragraph (4), including by posting an electronic copy of such report on the Internet website of the Department of

Defense or the Department of Veterans Affairs, as applicable, that is available to the public.

(6) GAO AUDIT.—Not later than 45 days after the submittal to Congress of the report under paragraph (4) on the final joint Department of Defense-Department of Veterans Affairs plan under paragraph (2), the Comptroller General of the United States shall submit to Congress a report assessing the contents of such report under paragraph (4). The report of the Comptroller General under this paragraph shall include—

(A) an assessment of the adequacy and sufficiency of the final joint Department of Defense-Department of Veterans Affairs plan in addressing the findings and recommendations of the National Academy of Sciences as a result of the study required under subsection (a);

(B) an assessment of the feasibility and advisability of the modifications of policy and practice proposed in the final joint Department of Defense-Department of Veterans Affairs plan;

(C) an assessment of the sufficiency and accuracy of the cost estimates in the final joint Department of Defense-Department of Veterans Affairs plan; and

(D) the comments, if any, of the National Academy of Sciences on the final joint Department of Defense-Department of Veterans Affairs plan.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense such sums as may be necessary to carry out this section.

TITLE II—VETERANS MATTERS

SEC. 201. SENSE OF CONGRESS ON DEPARTMENT OF VETERANS AFFAIRS EFFORTS IN THE REHABILITATION AND REINTEGRATION OF VETERANS WITH TRAUMATIC BRAIN INJURY.

It is the sense of Congress that—

(1) the Department of Veterans Affairs is a leader in the field of traumatic brain injury care and coordination of such care;

(2) the Department of Veterans Affairs should have the capacity and expertise to provide veterans who have a traumatic brain injury with patient-centered health care, rehabilitation, and community integration services that are comparable to or exceed similar care and services available to persons with such injuries in the academic and private sector;

(3) rehabilitation for veterans who have a traumatic brain injury should be individualized, comprehensive, and interdisciplinary with the goals of optimizing the independence of such veterans and reintegrating them into their communities;

(4) family support is integral to the rehabilitation and community reintegration of veterans who have sustained a traumatic brain injury, and the Department should provide the families of such veterans with education and support;

(5) the Department of Defense and Department of Veterans Affairs have made efforts to provide a smooth transition of medical care and rehabilitative services to individuals as they transition from the health care system of the Department of Defense to that of the Department of Veterans Affairs, but more can be done to assist veterans and their families in the continuum of the rehabilitation, recovery, and reintegration of wounded or injured veterans into their communities;

(6) in planning for rehabilitation and community reintegration of veterans who have a traumatic brain injury, it is necessary for the Department of Veterans Affairs to provide a system for life-long case management for such veterans; and

(7) in such system for life-long case management, it is necessary to conduct outreach and to tailor specialized traumatic brain injury case management and outreach for the unique needs of veterans with traumatic brain injury who reside in urban and non-urban settings.

SEC. 202. INDIVIDUAL REHABILITATION AND COMMUNITY REINTEGRATION PLANS FOR VETERANS AND OTHERS WITH TRAUMATIC BRAIN INJURY.

(a) IN GENERAL.—Subchapter II of chapter 17 of title 38, United States Code, is amended by inserting after section 1710B the following new section:

"§ 1710C. Traumatic brain injury: plans for rehabilitation and reintegration into the community

''(a) PLAN REQUIRED.—The Secretary shall, for each veteran or member of the Armed Forces who receives inpatient or outpatient rehabilitation care from the Department for a traumatic brain injury—

''(1) develop an individualized plan for the rehabilitation and reintegration of such individual into the community; and

''(2) provide such plan in writing to such individual before such individual is discharged from inpatient care, following transition from active duty to the Department for outpatient care, or as soon as practicable following diagnosis.

''(b) CONTENTS OF PLAN.—Each plan developed under subsection (a) shall include, for the individual covered by such plan, the following:

''(1) Rehabilitation objectives for improving the physical, cognitive, and vocational functioning of such individual with the goal of maximizing the independence and reintegration of such individual into the community.

''(2) Access, as warranted, to all appropriate rehabilitative components of the traumatic brain injury continuum of care.

''(3) A description of specific rehabilitative treatments and other services to achieve the objectives described in paragraph (1), which description shall set forth the type, frequency, duration, and location of such treatments and services.

''(4) The name of the case manager designated in accordance with subsection (d) to be responsible for the implementation of such plan.

''(5) Dates on which the effectiveness of the plan will be reviewed in accordance with subsection (f).

''(c) COMPREHENSIVE ASSESSMENT.—

''(1) IN GENERAL.—Each plan developed under subsection (a) shall be based upon a comprehensive assessment, developed in accordance with paragraph (2), of—

''(A) the physical, cognitive, vocational, and neuropsychological and social impairments of such individual; and

''(B) the family education and family support needs of such individual after discharge from inpatient care.

''(2) FORMATION.—The comprehensive assessment required under paragraph (1) with respect to an individual is a comprehensive assessment of the matters set forth in that paragraph by a team, composed by the Secretary for purposes of the assessment from among, but not limited to, individuals with expertise in traumatic brain injury, including the following:

''(A) A neurologist.

''(B) A rehabilitation physician.

''(C) A social worker.

''(D) A neuropsychologist.

''(E) A physical therapist.

''(F) A vocational rehabilitation specialist.

''(G) An occupational therapist.

''(H) A speech language pathologist.

''(I) A rehabilitation nurse.

''(J) An educational therapist.

''(K) An audiologist.

''(L) A blind rehabilitation specialist.

''(M) A recreational therapist.

''(N) A low vision optometrist.

''(O) An orthotist or prostetist.

''(P) An assistive technologist or rehabilitation engineer.

''(Q) An otolaryngology physician.

''(R) A dietician.

''(S) An opthamologist.

''(T) A psychiatrist.

''(d) CASE MANAGER.—(1) The Secretary shall designate a case manager for each individual described in subsection (a) to be responsible for the implementation of the plan, and coordination of such care, required by such subsection for such individual.

''(2) The Secretary shall ensure that such case manager has specific expertise in the care required by the individual to whom such case manager is designated, regardless of whether such case manager obtains such expertise through experience, education, or training.

''(e) PARTICIPATION AND COLLABORATION IN DEVELOPMENT OF PLANS.—(1) The Secretary shall involve each individual described in subsection (a), and the family or legal guardian of such individual, in the development of the plan for such individual under that subsection to the maximum extent practicable.

''(2) The Secretary shall collaborate in the development of a plan for an individual under subsection (a) with a State protection and advocacy system if—

''(A) the individual covered by such plan requests such collaboration; or

''(B) in the case such individual is incapacitated, the family or guardian of such individual requests such collaboration.

''(3) In the case of a plan required by subsection (a) for a member of the Armed Forces who is on active duty, the Secretary shall collaborate with the Secretary of Defense in the development of such plan.

''(4) In developing vocational rehabilitation objectives required under subsection (b)(1) and in conducting the assessment required under subsection (c), the Secretary shall act through the Under Secretary for Health in coordination with the Vocational Rehabilitation and Employment Service of the Department of Veterans Affairs.

''(f) EVALUATION.—

''(1) PERIODIC REVIEW BY SECRETARY.—The Secretary shall periodically review the effectiveness of each plan developed under subsection (a). The Secretary shall refine each such plan as the Secretary considers appropriate in light of such review.

''(2) REQUEST FOR REVIEW BY VETERANS.—In addition to the periodic review required by paragraph (1), the Secretary shall conduct a review of the plan of a veteran under paragraph (1) at the request of such veteran, or in the case that such veteran is incapacitated, at the request of the guardian or the designee of such veteran.

''(g) STATE DESIGNATED PROTECTION AND ADVOCACY SYSTEM DEFINED.—In this section, the term 'State protection and advocacy system' means a system established in a State under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) to protect and advocate for the rights of persons with development disabilities.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1710B the following new item:

''1710C. Traumatic brain injury: plans for rehabilitation and reintegration into the community.''.

SEC. 203. USE OF NON-DEPARTMENT OF VETERANS AFFAIRS FACILITIES FOR IMPLEMENTATION OF REHABILITATION AND COMMUNITY REINTEGRATION PLANS FOR TRAUMATIC BRAIN INJURY.

(a) IN GENERAL.—Subchapter II of chapter 17 of title 38, United States Code, is amended by inserting after section 1710C, as added by section 202 of this Act, the following new section:

''§ 1710D. Traumatic brain injury: use of non-Department facilities for rehabilitation

''(a) IN GENERAL.—Subject to section 1710(a)(4) of this title and subsection (b) of this section, the Secretary shall provide rehabilitative treatment or services to implement a plan developed under section 1710C of this title at a non-Department facility with which the Secretary has entered into an agreement for such purpose, to an individual—

''(1) who is described in section 1710C(a) of this title; and

''(2)(A) to whom the Secretary is unable to provide such treatment or services at the frequency or for the duration prescribed in such plan; or

''(B) for whom the Secretary determines that it is optimal with respect to the recovery and rehabilitation of such individual.

''(b) STANDARDS.—The Secretary may not provide treatment or services as described in subsection (a) at a non-Department facility under such subsection unless such facility maintains standards for the provision of such treatment or services established by an independent, peer-reviewed organization that accredits specialized rehabilitation programs for adults with traumatic brain injury.

''(c) AUTHORITIES OF STATE PROTECTION AND ADVOCACY SYSTEMS.—With respect to the provision of rehabilitative treatment or services described in subsection (a) in a non-Department facility, a State designated protection and advocacy system established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) shall have the authorities described under such subtitle.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1710C, as added by section 202 of this Act, the following new item:

''1710D. Traumatic brain injury: use of non-Department facilities for rehabilitation.''.

(c) CONFORMING AMENDMENT.—Section 1710(a)(4) of such title is amended by inserting ''the requirement in section 1710D of this title that the Secretary provide certain rehabilitative treatment or services,'' after ''extended care services,''.

SEC. 204. RESEARCH, EDUCATION, AND CLINICAL CARE PROGRAM ON SEVERE TRAUMATIC BRAIN INJURY.

(a) PROGRAM REQUIRED.—Subchapter II of chapter 73 of title 38, United States Code, is amended by inserting after section 7330 the following new section:

''§ 7330A. Severe traumatic brain injury research, education, and clinical care program

''(a) PROGRAM REQUIRED.—The Secretary shall establish a program on research, education, and clinical care to provide intensive neuro-rehabilitation to veterans with a severe traumatic brain injury, including veterans in a minimally conscious state who would otherwise receive only long-term residential care.

''(b) COLLABORATION REQUIRED.—The Secretary shall establish the program required by subsection (a) in collaboration with the Defense and Veterans Brain Injury Center and other relevant programs of the Federal Government (including other Centers of Excellence).

''(c) EDUCATION REQUIRED.—As part of the program required by subsection (a), the Secretary shall, in collaboration with the Defense and Veterans Brain Injury Center and any other relevant programs of the Federal Government (including other Centers of Excellence), conduct educational programs on recognizing and diagnosing mild and moderate cases of traumatic brain injury.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for each of fiscal years 2008 through 2012, $10,000,000 to carry out the program required by subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7330 the following new item:

''7330A. Severe traumatic brain injury research, education, and clinical care program.''.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report on the research to be conducted under the program required by section 7330A of title 38, United States Code, as added by subsection (a).

SEC. 205. PILOT PROGRAM ON ASSISTED LIVING SERVICES FOR VETERANS WITH TRAUMATIC BRAIN INJURY.

(a) PILOT PROGRAM.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall, in collaboration with the Defense and Veterans Brain Injury Center, carry out a pilot program to assess the effectiveness of providing assisted living services to eligible veterans to enhance the rehabilitation, quality of life, and community integration of such veterans.

(b) DURATION OF PROGRAM.—The pilot program shall be carried out during the five-year period beginning on the date of the commencement of the pilot program.

(c) PROGRAM LOCATIONS.—

(1) IN GENERAL.—The pilot program shall be carried out at locations selected by the Secretary for purposes of the pilot program. Of the locations so selected—

(A) at least one shall be in each health care region of the Veterans Health Administration that contains a polytrauma center of the Department of Veterans Affairs; and

(B) any other locations shall be in areas that contain high concentrations of veterans with traumatic brain injury, as determined by the Secretary.

(2) SPECIAL CONSIDERATION FOR VETERANS IN RURAL AREAS.—Special consideration shall be given to provide veterans in rural areas with an opportunity to participate in the pilot program.

(d) PROVISION OF ASSISTED LIVING SERVICES.—

(1) AGREEMENTS.—In carrying out the pilot program, the Secretary may enter into agreements for the provision of assisted living services on behalf of eligible veterans with a provider participating under a State plan or waiver under title XIX of such Act (42 U.S.C. 1396 et seq.).

(2) STANDARDS.—The Secretary may not place, transfer, or admit a veteran to any facility for assisted living services under this program unless the Secretary determines that the facility meets such standards as the Secretary may prescribe for purposes of the pilot program. Such standards shall, to the extent practicable, be consistent with the standards of Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such facilities.

(e) CONTINUATION OF CASE MANAGEMENT AND REHABILITATION SERVICES.—In carrying the pilot program under subsection (a), the Secretary shall continue to provide each veteran who is receiving assisted living services under the pilot program with rehabilitative services and shall designate Department health-care employees to furnish case management services for veterans participating in the pilot program.

(f) REPORT.—

(1) IN GENERAL.—Not later than 60 days after the completion of the pilot program, the Secretary shall submit to the congressional veterans affairs committees a report on the pilot program.

(2) CONTENTS.—The report required by paragraph (1) shall include the following:

(A) A description of the pilot program.

(B) An assessment of the utility of the activities under the pilot program in enhancing the rehabilitation, quality of life, and community reintegration of veterans with traumatic brain injury.

(C) Such recommendations as the Secretary considers appropriate regarding the extension or expansion of the pilot program.

(g) DEFINITIONS.—In this section:

(1) The term ''assisted living services'' means services of a facility in providing room, board, and personal care for and supervision of residents for their health, safety, and welfare.

(2) The term ''case management services'' includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department), monitoring, reassessment, and followup.

(3) The term ''congressional veterans affairs committees'' means—

(A) the Committee on Veterans' Affairs of the Senate; and

(B) the Committee on Veterans' Affairs of the House of Representatives.

(4) The term ''eligible veteran'' means a veteran who—

(A) is enrolled in the Department of Veterans Affairs health care system;

(B) has received treatment for traumatic brain injury from the Department of Veterans Affairs;

(C) is unable to manage routine activities of daily living without supervision and assistance; and

(D) could reasonably be expected to receive ongoing services after the end of the pilot program under this section under another government program or through other means.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Veterans Affairs to carry out this section, $8,000,000 for each of fiscal years 2008 through 2013.

SEC. 206. RESEARCH ON TRAUMATIC BRAIN INJURY.

(a) INCLUSION OF RESEARCH ON TRAUMATIC BRAIN INJURY UNDER ONGOING RESEARCH PROGRAMS.—The Secretary of Veterans Affairs shall, in carrying out research programs and activities under the provisions of law referred to in subsection (b), ensure that such programs and activities include research on the sequelae of mild to severe forms of traumatic brain injury, including—

(1) research on visually-related neurological conditions;

(2) research on seizure disorders;

(3) research on means of improving the diagnosis, rehabilitative treatment, and prevention of such sequelae;

(4) research to determine the most effective cognitive and physical therapies for the sequelae of traumatic brain injury; and

(5) research on dual diagnosis of post-traumatic stress disorder and traumatic brain injury.

(b) RESEARCH AUTHORITIES.—The provisions of law referred to in this subsection are the following:

(1) Section 3119 of title 38, United States Code, relating to rehabilitation research and special projects.

(2) Section 7303 of such title, relating to research programs of the Veterans Health Administration.

(3) Section 7327 of such title, relating to research, education, and clinical activities on

complex multi-trauma associated with combat injuries.

(c) COLLABORATION.—In carrying out the research required by subsection (a), the Secretary shall collaborate with facilities that—

(1) conduct research on rehabilitation for individuals with traumatic brain injury; and

(2) receive grants for such research from the National Institute on Disability and Rehabilitation Research of the Department of Education.

(d) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report describing in comprehensive detail the research to be carried out pursuant to subsection (a).

SEC. 207. AGE-APPROPRIATE NURSING HOME CARE.

(a) FINDING.—Congress finds that young veterans who are injured or disabled through military service and require long-term care should have access to age-appropriate nursing home care.

(b) REQUIREMENT TO PROVIDE AGE-APPROPRIATE NURSING HOME CARE.—Section 1710A of title 38, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

''(c) The Secretary shall ensure that nursing home care provided under subsection (a) is provided in an age-appropriate manner.''.

SEC. 208. EXTENSION OF PERIOD OF ELIGIBILITY FOR HEALTH CARE FOR COMBAT SERVICE IN THE PERSIAN GULF WAR OR FUTURE HOSTILITIES.

Section 1710(e)(3)(C) of title 38, United States Code, is amended by striking ''2 years'' and inserting ''5 years''.

SEC. 209. MENTAL HEALTH: SERVICE-CONNECTION STATUS AND EVALUATIONS FOR CERTAIN VETERANS.

(a) PRESUMPTION OF SERVICE-CONNECTION OF MENTAL ILLNESS FOR CERTAIN VETERANS.—Section 1702 of title 38, United States Code, is amended—

(1) by striking ''psychosis'' and inserting ''mental illness''; and

*(2) in the heading, by striking ''**psychosis**'' and inserting ''**mental illness**''.*

(b) PROVISION OF MENTAL HEALTH EVALUATIONS FOR CERTAIN VETERANS.—Upon the request of a veteran described in section 1710(e)(3)(C) of title 38, United States Code, the Secretary shall provide to such veteran a preliminary mental health evaluation as soon as practicable, but not later than 30 days after such request.

SEC. 210. MODIFICATION OF REQUIREMENTS FOR FURNISHING OUTPATIENT DENTAL SERVICES TO VETERANS WITH A SERVICE-CONNECTED DENTAL CONDITION OR DISABILITY.

Section 1712(a)(1)(B)(iv) of title 38, United States Code, is amended by striking ''90-day'' and inserting ''180-day''.

SEC. 211. DEMONSTRATION PROGRAM ON PREVENTING VETERANS AT-RISK OF HOMELESSNESS FROM BECOMING HOMELESS.

(a) DEMONSTRATION PROGRAM.—The Secretary of Veterans Affairs shall carry out a demonstration program for the purpose of—

(1) identifying members of the Armed Forces on active duty who are at risk of becoming homeless after they are discharged or released from active duty; and

(2) providing referral, counseling, and supportive services, as appropriate, to help prevent such members, upon becoming veterans, from becoming homeless.

(b) PROGRAM LOCATIONS.—The Secretary shall carry out the demonstration program in at least three locations.

(c) IDENTIFICATION CRITERIA.—In developing and implementing the criteria to identify members of the Armed Forces, who upon becoming veterans, are at-risk of becoming homeless, the Secretary of Veterans Affairs shall consult with the Secretary of Defense and such other officials and experts as the Secretary considers appropriate.

(d) CONTRACTS.—The Secretary of Veterans Affairs may enter into contracts to provide the referral, counseling, and supportive services required under the demonstration program with entities or organizations that meet such requirements as the Secretary may establish.

(e) SUNSET.—The authority of the Secretary under subsection (a) shall expire on September 30, 2011.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for the purpose of carrying out the provisions of this section.

SEC. 212. CLARIFICATION OF PURPOSE OF THE OUTREACH SERVICES PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) CLARIFICATION OF INCLUSION OF MEMBERS OF THE NATIONAL GUARD AND RESERVE IN PROGRAM.—Subsection (a)(1) of section 6301 of title 38, United States Code, is amended by inserting '', or from the National Guard or Reserve,'' after ''active military, naval, or air service''.

(b) DEFINITION OF OUTREACH.—Subsection (b) of such section is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2) the following new paragraph (1):

''(1) the term 'outreach' means the act or process of reaching out in a systematic manner to proactively provide information, services, and benefits counseling to veterans, and to the spouses, children, and parents of veterans who may be eligible to receive benefits under the laws administered by the Secretary, to ensure that such individuals are fully informed about, and assisted in applying for, any benefits and programs under such laws;''.

TITLE III

SEC. 301. FISCAL YEAR 2008 INCREASE IN MILITARY BASIC PAY.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during Fiscal year 2008 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized for members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2008, the rates of monthly basic pay for members of the uniformed services are increased by 3.5 percent.

SENATE LEGAL COUNSEL AUTHORIZATION

Mr. SANDERS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 284 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 284) to authorize testimony and legal representation in City and County of Denver v. Susan I. Gomez, Daniel R. Egger, and Carter Merrill.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Madam President, this resolution concerns a request for testimony and representation in trespass actions in Denver County Court in Denver, CO. In these actions, protesters have been charged with trespassing in the building housing Senator KEN SALAZAR's Denver, CO, office on February 21, 2007, for refusing repeated requests by the police to leave the premises. Trials on charges of trespass are scheduled to commence on August 22, 2007. The defense has subpoenaed a member of the Senator's staff who had conversations with the defendant protesters during the charged events. Senator SALAZAR would like to cooperate by providing testimony from his staff. This resolution would authorize that staff member, and any other employee of Senator SALAZAR's office from whom evidence may be required, to testify in connection with these actions, with representation by the Senate Legal Counsel.

Mr. SANDERS. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 284) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 284

Whereas, in the cases of City and County of Denver v. Susan I. Gomez (07GS008693), Daniel R. Egger (07GS008692), and Carter Merrill (07GS967589), pending in Denver County Court in Denver, Colorado, testimony has been requested from Matthew Cheroutes, an employee in the office of Senator Ken Salazar;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Matthew Cheroutes and any other employees of Senator Salazar's office from whom testimony may be required are authorized to testify in the cases of City and County of Denver v. Susan I. Gomez, Daniel R. Egger, and Carter Merrill, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Matthew Cheroutes and other employees of Senator Salazar's staff in the actions referenced in section one of this resolution.

REGARDING COURTS WITH FIDUCIARY RESPONSIBILITY FOR A CHILD OF A DECEASED MEMBER OF THE ARMED FORCES

Mr. SANDERS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 175, just received from the House and at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 175) expressing the sense of Congress that courts with fiduciary responsibility for a child of a deceased member of the Armed Forces who receives a death gratuity payment under section 1477 of title 10, United States Code, should take into consideration the expression of clear intent of the member regarding the distribution of funds on behalf of the child.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. SANDERS. Madam President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 175) was agreed to.

The preamble was agreed to.

STOPPING GENOCIDE AND VIOLENCE IN DARFUR, SUDAN

Mr. SANDERS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 242, S. Res. 203.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 203) calling on the Government of the People's Republic of China to use its unique influence and economic leverage to stop genocide and violence in Darfur, Sudan.

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Foreign Relations with an amendment to strike out all after the resolving clause: an amendment to strike the preamble and insert in lieu thereof the following:

S. RES. 203

Whereas since the conflict in Darfur, Sudan began in 2003, hundreds of thousands of people have been killed and more than 2,500,000 displaced as a result of the ongoing and escalating violence;

Whereas on July 23, 2004, Congress declared, ''the atrocities unfolding in Darfur, Sudan, are genocide'' and on September 23, 2004, then Secretary of State Colin Powell stated before the Committee on Foreign Relations of the Senate that, ''genocide has occurred and may still be occurring in Darfur,'' and ''the Government of Sudan and the Janjaweed bear responsibility'';

Whereas on October 13, 2006, the President signed the Darfur Peace and Accountability Act (Public Law 109–344), which identifies the Government of Sudan as complicit with the forces committing genocide in the Darfur region and urges the President to, ''take all necessary and appropriate steps to deny the Government of Sudan access to oil revenues'';

Whereas President George W. Bush declared in a speech delivered on April 18, 2007, at the United States Holocaust Memorial Museum that no one ''can doubt that genocide is the only word for what is happening in Darfur—and that we have a moral obligation to stop it'';

Whereas the presence of approximately 7,000 African Union peacekeepers has not deterred the violence and the increasing attacks by the Government-sponsored Janjaweed militia and rebel groups;

Whereas the Government of Sudan has previously refused to allow implementation of the full-scale peacekeeping mission authorized under United Nations Security Council Resolution 1706;

Whereas former United Nations Secretary-General Kofi Annan subsequently negotiated a compromise agreement with the Government of Sudan for a hybrid United Nations-African Union peacekeeping mission to be implemented in 3 phases;

Whereas the African Union and the United Nations have both affirmed that the Government of Sudan has now stated that it will accept implementation of a hybrid United Nations-African Union peacekeeping mission;

Whereas the Sudanese government has reneged on and obstructed earlier agreements;

Whereas it is critical that the nations of the world, and particularly the members of the United Nations Security Council, take steps to implement the full deployment of this hybrid peacekeeping mission as soon as possible;

Whereas the Government of the People's Republic of China has long-standing economic and military ties with Sudan and continues to strengthen these ties in spite of the on-going genocide in Darfur, as evidenced by the following actions:

(1) China reportedly purchases as much as 70 percent of Sudan's oil;

(2) China currently has at least $3,000,000,000 invested in the Sudanese energy sector, for a total of $10,000,000,000 since the 1990s;

(3) Sudan's Joint Chief of Staff, Haj Ahmed El Gaili, recently visited Beijing for discussions with Chinese Defense Minister Cao Gang Chuan and other military officials as part of an eight-day tour of China; Cao pledged closer military relations with Sudan, saying that China was ''willing to further develop cooperation between the two militaries in every sphere'';

(4) China has reportedly cancelled approximately $100,000,000 in debt owed by the Sudanese Government; and

(5) China is building infrastructure in Sudan and provided funds for a presidential palace in Sudan at a reported cost of approximately $20,000,000;

Whereas given its economic interests throughout the region, China has a unique ability to positively influence the Government of Sudan to abandon its genocidal policies and to accept United Nations peacekeepers to join a hybrid United Nations-African Union peacekeeping mission;

Whereas the President's Special Envoy to Sudan, Andrew S. Natsios, further said in testimony on April 11, 2007, that ''China's substantial economic investment in Sudan gives it considerable potential leverage, and we have made clear to Beijing that the international community will expect China to be part of the solution'';

Whereas the Government of the People's Republic of China has previously influenced the Government of Sudan to take steps toward reducing violence and conflict by—

(1) abstaining from, and choosing not to obstruct, several important votes in the United Nations Security Council on resolutions related to Sudan, including Resolution 1556, which demanded Sudan disarm militias in Darfur, and Resolution 1706, which called for the deployment of additional United Nations peacekeepers, including up to 17,300 military personnel and up to 3,300 civilian police;

(2) helping to facilitate the Addis Ababa framework reached on November 16, 2006, which provides for a joint United Nations-African Union peacekeeping force;

(3) sending high-level delegations, including Chinese President Hu Jintao, to Sudan, and encouraging President Bashir to show flexibility and allow the joint United Nations-African Union peacekeeping force to be deployed;

(4) making frequent public statements that the Government of Sudan must carry out agreements made within the Addis Ababa framework of November 2006 to admit United Nations peacekeepers to join the United Nations-African Union peacekeeping force in Darfur;

(5) pledging to provide military engineers to support African Union peacekeeping forces in Darfur;

(6) announcing on May 10, 2007, the appointment of a senior diplomat as China's special representative on African affairs who is to focus specific attention on the Darfur issue; and

(7) reportedly exercising its influence to help convince the Khartoum government to accept the hybrid peacekeeping mission;

Whereas due to its vast population, its rapidly growing global economy, its large research and development investments and military spending, its seat as a permanent member of the United Nations Security Council and on the Asia-Pacific Economic Cooperation, China is an emerging power that is increasingly perceived as a leader with significant international reach and responsibility;

Whereas in November 2006, China hosted its third Forum on China-Africa Cooperation with more than 40 heads of state in attendance and which focused heavily on trade relations and investment on the African continent as it is expected to double by 2010;

Whereas China is preparing to host the Olympic Summer Games of 2008, the most honorable, venerated, and prestigious international sporting event;

Whereas China should be held accountable to act consistently with the Olympic standard of preserving human dignity in Darfur, Sudan and around the world; and

Whereas China has previously been reluctant to use its full influence to improve the human rights situation in Darfur, but recent events have demonstrated the impact that China can have as a positive influence on this situation: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the close relationship between China and Sudan and strongly urges the Government of the People's Republic of China to use its full influence to—

(A) urge the President of Sudan, Omar al-Bashir, to abide by his agreement to allow a robust peacekeeping force under United Nations command and control as described in United Nations Security Council Resolution 1706;

(B) call for Sudanese compliance with United Nations Security Council Resolutions 1556 and 1564, and the Darfur Peace Agreement, all of which demand that the Government of Sudan disarm militias operating in Darfur;

(C) call on all parties to the conflict to adhere to the 2004 N'Djamena ceasefire agreement and the recently-agreed United Nations communique which commits the Sudanese government to improve conditions for humanitarian organizations and ensure they have unfettered access to the populations they serve;

(D) emphasize that there can be no military solution to the conflict in Darfur and that the formation and implementation of a legitimate peace agreement between all parties will contribute toward the welfare and stability of the entire nation and broader region;

(E) urge all rebel groups to unify and assist all parties to come to the negotiating table in good faith;

(F) urge the Government of southern Sudan to play a more active role in pressing for legitimate peace talks and take immediate steps to support and assist in the revitalization of such talks along 1 single coordinated track;

(G) continue to engage collaboratively in high-level diplomacy and multilateral efforts toward a renewed peace process; and

(H) join the international community in imposing economic and other consequences on the Government of Sudan if that government continues to carry out or support attacks on innocent civilians and frustrate diplomatic efforts; and

(2) recognizes that the spirit of the Olympics, which is to bring together nations and people from all over the world in peace, is incompatible with any actions, directly or indirectly, supporting acts of genocide.

Mr. SANDERS. Madam President, I ask unanimous consent that the committee-reported substitute be agreed to, the resolution, as amended, be agreed to, that the amendment to the preamble be agreed to, the preamble, as amended, be agreed to, and the motions to reconsider be laid upon the table en bloc, that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee-reported substitute was agreed to.

The resolution (S. Res. 203), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 203

Whereas since the conflict in Darfur, Sudan began in 2003, hundreds of thousands of people have been killed and more than 2,500,000 displaced as a result of the ongoing and escalating violence;

Whereas on July 23, 2004, Congress declared, ''the atrocities unfolding in Darfur, Sudan, are genocide'' and on September 23, 2004, then Secretary of State Colin Powell stated before the Committee on Foreign Relations of the Senate that, ''genocide has occurred and may still be occurring in Darfur,'' and ''the Government of Sudan and the Janjaweed bear responsibility'';

Whereas on October 13, 2006, the President signed the Darfur Peace and Accountability Act (Public Law 109–344), which identifies the Government of Sudan as complicit with the forces committing genocide in the Darfur region and urges the President to, ''take all necessary and appropriate steps to deny the Government of Sudan access to oil revenues'';

Whereas President George W. Bush declared in a speech delivered on April 18, 2007, at the United States Holocaust Memorial Museum that no one ''can doubt that genocide is the only word for what is happening in Darfur—and that we have a moral obligation to stop it'';

Whereas the presence of approximately 7,000 African Union peacekeepers has not deterred the violence and the increasing attacks by the Government-sponsored Janjaweed militia and rebel groups;

Whereas the Government of Sudan has previously refused to allow implementation of the full-scale peacekeeping mission authorized under United Nations Security Council Resolution 1706;

Whereas former United Nations Secretary-General Kofi Annan subsequently negotiated a compromise agreement with the Government of Sudan for a hybrid United Nations-African Union peacekeeping mission to be implemented in 3 phases;

Whereas the African Union and the United Nations have both affirmed that the Government of Sudan has now stated that it will accept implementation of a hybrid United Nations-African Union peacekeeping mission;

Whereas the Sudanese government has reneged on and obstructed earlier agreements;

Whereas it is critical that the nations of the world, and particularly the members of the United Nations Security Council, take steps to implement the full deployment of this hybrid peacekeeping mission as soon as possible;

Whereas the Government of the People's Republic of China has long-standing economic and military ties with Sudan and continues to strengthen these ties in spite of the on-going genocide in Darfur, as evidenced by the following actions:

(1) China reportedly purchases as much as 70 percent of Sudan's oil;

(2) China currently has at least $3,000,000,000 invested in the Sudanese energy sector, for a total of $10,000,000,000 since the 1990s;

(3) Sudan's Joint Chief of Staff, Haj Ahmed El Gaili, recently visited Beijing for discussions with Chinese Defense Minister Cao Gang Chuan and other military officials as part of an eight-day tour of China; Cao pledged closer military relations with Sudan, saying that China was ''willing to further develop cooperation between the two militaries in every sphere'';

(4) China has reportedly cancelled approximately $100,000,000 in debt owed by the Sudanese Government; and

(5) China is building infrastructure in Sudan and provided funds for a presidential palace in Sudan at a reported cost of approximately $20,000,000;

Whereas given its economic interests throughout the region, China has a unique ability to positively influence the Government of Sudan to abandon its genocidal policies and to accept United Nations peacekeepers to join a hybrid United Nations-African Union peacekeeping mission;

Whereas the President's Special Envoy to Sudan, Andrew S. Natsios, further said in testimony on April 11, 2007, that ''China's substantial economic investment in Sudan gives it considerable potential leverage, and we have made clear to Beijing that the international community will expect China to be part of the solution'';

Whereas the Government of the People's Republic of China has previously influenced the Government of Sudan to take steps toward reducing violence and conflict by—

(1) abstaining from, and choosing not to obstruct, several important votes in the United Nations Security Council on resolutions related to Sudan, including Resolution 1556, which demanded Sudan disarm militias in Darfur, and Resolution 1706, which called for the deployment of additional United Nations peacekeepers, including up to 17,300 military personnel and up to 3,300 civilian police;

(2) helping to facilitate the Addis Ababa framework reached on November 16, 2006, which provides for a joint United Nations-African Union peacekeeping force;

(3) sending high-level delegations, including Chinese President Hu Jintao, to Sudan, and encouraging President Bashir to show flexibility and allow the joint United Nations-African Union peacekeeping force to be deployed;

(4) making frequent public statements that the Government of Sudan must carry out agreements made within the Addis Ababa framework of November 2006 to admit United Nations peacekeepers to join the United Nations-African Union peacekeeping force in Darfur;

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(6) announcing on May 10, 2007, the appointment of a senior diplomat as China's special representative on African affairs who is to focus specific attention on the Darfur issue; and

(7) reportedly exercising its influence to help convince the Khartoum government to accept the hybrid peacekeeping mission;

Whereas due to its vast population, its rapidly growing global economy, its large research and development investments and military spending, its seat as a permanent member of the United Nations Security Council and on the Asia-Pacific Economic Cooperation, China is an emerging power that is increasingly perceived as a leader with significant international reach and responsibility;

Whereas in November 2006, China hosted its third Forum on China-Africa Cooperation with more than 40 heads of state in attendance and which focused heavily on trade relations and investment on the African continent as it is expected to double by 2010;

Whereas China is preparing to host the Olympic Summer Games of 2008, the most honorable, venerated, and prestigious international sporting event;

Whereas China should be held accountable to act consistently with the Olympic standard of preserving human dignity in Darfur, Sudan and around the world; and

Whereas China has previously been reluctant to use its full influence to improve the human rights situation in Darfur, but recent events have demonstrated the impact that China can have as a positive influence on this situation: Now, therefore, be it

Resloved, That the Senate—

(1) recognizes the close relationship between China and Sudan and strongly urges the Government of the People's Republic of China to use its full influence to—

(A) urge the President of Sudan, Omar al-Bashir, to abide by his agreement to allow a robust peacekeeping force under United Nations command and control as described in United Nations Security Council Resolution 1706;

(B) call for Sudanese compliance with United Nations Security Council Resolutions 1556 and 1564, and the Darfur Peace Agreement, all of which demand that the Government of Sudan disarm militias operating in Darfur;

(C) call on all parties to the conflict to adhere to the 2004 N'Djamena ceasefire agreement and the recently-agreed United Nations communique which commits the Sudanese government to improve conditions for humanitarian organizations and ensure they have unfettered access to the populations they serve;

(D) emphasize that there can be no military solution to the conflict in Darfur and that the formation and implementation of a legitimate peace agreement between all parties will contribute toward the welfare and stability of the entire nation and broader region;

(E) urge all rebel groups to unify and assist all parties to come to the negotiating table in good faith;

(F) urge the Government of southern Sudan to play a more active role in pressing for legitimate peace talks and take immediate steps to support and assist in the revitalization of such talks along 1 single coordinated track;

(G) continue to engage collaboratively in high-level diplomacy and multilateral efforts toward a renewed peace process; and

(H) join the international community in imposing economic and other consequences on the Government of Sudan if that government continues to carry out or support attacks on innocent civilians and frustrate diplomatic efforts; and

(2) recognizes that the spirit of the Olympics, which is to bring together nations and people from all over the world in peace, is incompatible with any actions, directly or indirectly, supporting acts of genocide.

DISCHARGE AND REFERRAL—H.R. 2011

Mr. SANDERS. Madam President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be discharged from further consideration of H.R. 2011 and the bill be referred to the Committee on Environment and Public Works.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JULY 31, 2007

Mr. SANDERS. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. Tuesday, July 31; that on Tuesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that there then be a period of morning business for 60 minutes, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half; that at the close of morning business, all time postcloture be considered yielded back and the motion to proceed to H.R. 976 be agreed to and the Senate then proceed to the bill; that on Tuesday, the Senate recess from 12:30 p.m. to 2:15 p.m. for the respective party conference work periods; that during the recess, adjournment, and morning business, all time count postcloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SANDERS. Madam President, if there is no further business, I now ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:24 p.m., adjourned until Tuesday, July 31, 2007, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. JAMES A. WINNEFELD, JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. MARK P. FITZGERALD, 0000