United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, TUESDAY, FEBRUARY 1, 2005 No. 8

Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

PRAYER

The PRESIDING OFFICER. Today's prayer will be offered by former Senate Chaplain Dr. Lloyd Ogilvie from Los Angeles, CA.

Almighty God, Sovereign of this Nation and Lord of our lives, thank You for the gifts of life, intellect, good memories, and daring visions. We don't ask for challenges equal to our talents and training, education and experience; rather, we ask for opportunities equal to Your power and vision. Forgive us when we pare life down to what we could do on our own without Your power. Make us adventuresome, undaunted leaders who seek to know what You want done and attempt it because You will provide exactly what is needed to accomplish it. We thank You that tough times are nothing more than possibilities wrapped in negative attitudes.

Lord of the unfolding drama of history, we praise You for the triumph of the first free election in half a century in Iraq. We honor the courage of the millions of Iraqis who defied danger and reprisal to exercise their new liberty from tyranny.

We know that freedom is not free; it is the legacy of liberators of our Armed Forces, some of whom paid the supreme price to assure freedom for the people of Iraq. Help us to cherish our freedoms in America and never take for granted the privileges we enjoy.

Now bless the women and men of this Senate. Help them experience the palpable presence of Your Spirit and receive the incredible resilience You provide. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI 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. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 1, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

Ms. MURKOWSKI 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. FRIST. Madam President, this morning we have a period for morning business until 10:45. At 10:45, we will proceed to executive session for the consideration of the nomination of Alberto Gonzales to be Attorney General. Chairman SPECTER will begin that debate. On this side, we are prepared to allow for a reasonable time for debate and then set a time certain for the vote. I hope that at an early hour today we will be able to lock in an agreement so that Members will be able to prepare accordingly. We do want all Senators to have the opportunity to come to the floor and express themselves and debate appropriately. Over the course of the morning, we will hopefully have more certainty in terms of when we will complete debate.

I do want to encourage Senators in the meantime to contact the chairman or the ranking member in order to facilitate an orderly schedule for speakers. I welcome the debate on Mr. Gonzales and look forward to the Senate acting on this important nomination.

Once again, I mentioned yesterday but I want to remind our colleagues today, we have a State of the Union Message tomorrow, a joint meeting of Congress at 9 p.m. We have asked Senators to gather in the Chamber beginning at 8:30 to proceed at 8:40 to the Hall of the House of Representatives tomorrow night.

I have a statement to make, but I would like to turn to the minority leader.

RECOGNITION OF THE MINORITY LEADER

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

WELCOME TO FORMER CHAPLAIN OGILVIE

Mr. REID. Madam President, as the distinguished majority leader and I stood in the aisle, as soon as Reverend Ogilvie finished his prayer, the Republican leader leaned over to me and said, how about that voice, or words to that effect. Those were the exact memories I have of Dr. Ogilvie. I spent 5 years listening to his prayers every morning. As a result of that, I felt it was a good way to start the day. It brought back so many memories of our time together.

It seems that one of the requirements, at least with the last two chaplains we have had, is the voice. Dr.

Black and Dr. Ogilvie have two of the finest voices I have ever heard and each time I hear them say something I become so envious that I have my voice and they have theirs.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Madam President, the Democratic leader is exactly right. That was our first comment. What is even more embarrassing is when you are side by side with either Lloyd Ogilvie or Chaplain Black and you have to sing, because their voices are so powerful, which does mean so much to us in terms of expressing feelings, emotion, and values. When it is applied to the beautiful voice of singing, it is especially embarrassing to me as they are next to me because the contrast is so dramatic.

It is a great pleasure for all of us to welcome Lloyd Ogilvie back with us this morning to open today with a prayer that struck at what we have seen the last couple of days, but also the real responsibility and obligations we have as Members of the Senate. We have been blessed with chaplains such as Chaplain Black and Chaplain Ogilvie to serve us and the American people so selflessly and unselfishly during our tenure.

TSUNAMI: LONG-TERM SOLUTIONS

Mr. FRIST. Madam President, I will comment on Judge Alberto Gonzales and his confirmation. Over the period for morning business, others will be coming by and speaking on the confirmation, although we do not officially begin until 10:45. Before doing that, I want to mention that tomorrow I will have the opportunity to testify before the Senate Commerce Committee. I was invited by Chairman STEVENS to speak on the long-term public health needs of the victims following the December 26 tsunami.

Early in January, Senator Mary Landrieu and I had the opportunity fairly early on in the recovery period to go to Sri Lanka where the observations were stark in many ways but in many ways inspiring, as we flew over the coastline in Sri Lanka and witnessed the unending devastation. We also saw on the ground the great outpouring of support, caring, and compassion, the best of humanity internationally but very specifically by Americans on the ground.

We all know from the tsunami we have the 5 million people who lost their homes and 150,000 people who lost their lives. The scars will be there for a long period of time. Senator STEVENS will have a hearing tomorrow to look at some appropriate initial responses in terms of prevention of that sort of catastrophe in the future. Tomorrow, I will be talking about a broad picture looking at public health issues such as cleaning of water and sanitation, and the role curing disease and public health can play as an expression of compassion and caring but also as a wonderful currency of peace in its manifestation.

I will also be introducing legislation shortly addressing this whole challenge of water and the global issues surrounding water, the fact that 1.2 billion people in the world today do not have a clean glass of water. Unfortunately, these waterborne illnesses are the No. 1 killer of children in the world today because 1.2 billion people do not have access to that water.

We will be introducing legislation to address the global water supply, quality and quantity, that will address some of the basic issues, humanitarian in part but public health in large part as well. We can do a lot through our foreign assistance, where we have misdirected our foreign assistance or we have not even focused on water, which I believe it deserves. I will also mention the importance of having a global health corps that can respond to disaster in a way that we saw so many wonderful volunteers coming from around the world to respond to this tsunami. In the aftermath of a terrible tragedy such as this, medicine heals not only the body but also the hearts and minds. As the tsunami tragedy underscores so powerfully, medicine can act as a currency of peace.

NOMINATION OF ALBERTO GONZALES

Mr. FRIST. Madam President, today the debate and discussion throughout will be on the nomination of Judge Alberto Gonzales to be Attorney General, and I am proud to be the first of many today to speak on this nomination and the strong support I have for this nominee. Judge Gonzales is a man of keen intellect, a man of high standing and achievement, and unwavering respect for the law. As our first Hispanic-American Attorney General, Judge Gonzales will stand as an inspiration to all Americans. He captures it in his life story. He is an outstanding choice to become our Nation's top law enforcement officer.

He has lived the American dream. We talk so much about the American dream. We point to people, parts of whose lives manifest the American dream. He lived it growing up in the town of Humble, TX, in a two-bedroom house shared by seven siblings and his mother and father. His parents, Pablo and Maria, were Mexican-American immigrants. They have little formal education. His dad completed second grade and that was it.

Inspired by his parents—as he tells it, their hard work—and spurred on by their encouragement, Judge Gonzales set his aspirations high and he was on the way. He has fulfilled them at every level. He played football and baseball in high school. On graduation, he joined the Air Force, from there enrolled in the Air Force Academy, and later transferred to Rice University. He became the first person in his family to go to college.

He didn't stop there. He was accepted at Harvard Law School, and with his Harvard law degree in hand he returned to Texas to join one of Houston's most respected law firms, and he was their first minority partner. At the firm, Judge Gonzales committed himself to the education of minority kids. He even helped create minority scholarships which to this day are awarded to those in need.

It didn't take long for people to recognize the tremendous talents of Judge Gonzales. He answered the call to public service. Newly elected Governor George Bush tapped Alberto Gonzales to join his administration as general counsel. He went on to become Texas's 100th secretary of state and then later a justice of the Texas Supreme Court.

Every step of the way he has worked hard. He has won the respect of his peers. His integrity and talent have allowed him to receive numerous awards. Those sterling qualities have also garnered the trust and loyalty of the President of the United States. As counsel to the President for the last 4 years, he has been one of the President's closest advisers. President Bush credits Judge Gonzales for his candor and for his ability to remain steady in times of crisis—qualities that are essential in an Attorney General. As we all know, it has been noted that when President John F. Kennedy nominated his brother Robert to lead the Justice Department, the relationship worked so well because the President could count on his unflinching candor in times of crisis.

The biography of Judge Gonzales speaks for itself. I do think it is important to, up front, address some of the criticisms that have been leveled against him. More than a few facts have been lost in the debate. These issues will be talked about, I know, over the course of the morning.

First, President Bush does not have nor has his administration ever had an official Government policy condoning or authorizing torture or prisoner abuse. Let me restate for the record what the policy has been and continues to be from a Presidential memo dated February 7, 2002:

> Our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. . . . As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions [governing the laws of war.]

Second, neither Judge Gonzales nor the President have condoned nor advocated nor authorized the torture of prisoners. In fact, on numerous occasions both have explicitly condemned torture as an abhorrent interrogation technique.

Third, Judge Gonzales was not the author but he was the recipient of

memos focusing on methods of interrogation of captured terrorists. The research memos that have been the focus of so much attention and criticism were written, not by the judge, but by the Office of Legal Counsel of the Department of Justice to Judge Gonzales as White House counsel. Those memos explored the legal interpretation of Federal law. They did not set administration policy. Indeed, the Department of Justice has since categorically withdrawn this legal analysis that has been interpreted by some as authorizing torture of terrorist detainees, stating unequivocally:

Torture is abhorrent both to American law and to international norms.

Unfortunately, these facts have not gotten in the way of a barrage of attacks on Judge Gonzales. I am disappointed but not discouraged. I am confident Judge Gonzales will be confirmed with bipartisan support. I am confident that as Attorney General, Judge Gonzales will continue to build on the successes of the last 4 years that we have seen in reducing crime and fighting corporate fraud and upholding our civil rights laws.

The judge has worked hard over the past 4 years to help America defend herself from terrorist attack while respecting our constitutional principles. In these uncertain times, we are fortunate to have a man with such high regard for the law serving our country and protecting our interests.

In closing, former Clinton Cabinet member Henry Cisneros just this month praised Judge Gonzales as ''better qualified than many recent Attorneys General,'' and one who can rely on memories of humble beginnings, using his words, ''to understand the realities many Americans still confront in their lives.''

Mr. Cisneros's sentiments are widely shared. Judge Gonzales is highly qualified to be America's next Attorney General. He will make America safer, more secure. He will lead the pursuit of justice. I urge my colleagues to offer their full support to the first Hispanic-American Attorney General, Alberto Gonzales, the man from Humble.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until 10:45 a.m., with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the majority leader or his designee.

The Senator from Illinois.

Mr. DURBIN. Madam President, I ask unanimous consent that the entire 1 hour, 60 minutes, that had been allocated for morning business still be allocated, equally divided between the Republican and Democratic sides.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. FRIST. Just reserving the right to object, I don't believe we will be using all our time in morning business. I would like to get to Judge Gonzales formally—we said at 10:45, at which time the chairman and ranking member are going to come. I think we will be yielding back some of our morning business time. If we can still shoot for 10:45, I think that will give your side an adequate 30 minutes in morning business.

Mr. DURBIN. I don't want to presume, but if we could have 30 minutes as originally allocated, that would be consistent with my request.

Mr. FRIST. Madam President, we had not originally said 30 minutes either side, but if you need 30 minutes this morning in morning business, that will be fine. We would like to start at 10:45, if possible, if that will give you adequate time.

Mr. DURBIN. If I could revise the request that the first 30 minutes of morning business be allocated to the Democratic side and the remaining time until 10:45 be allocated to the Republican side?

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

Mr. DURBIN. Thank you, Madam President.

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

GUARD AND RESERVE ENHANCEMENT BENEFITS ACT

Mrs. MURRAY. Madam President, this past weekend we witnessed a very important step forward in Iraq, as citizens around the country turned out to vote for a new National Assembly. Many Iraqis appear to have embraced the election and I, as so many others, was encouraged to see millions of them exercise their right to vote. But this past weekend's vote also really pushes to the forefront an important question back here, right here at home, about what we are doing to take care of the thousands of American soldiers who are serving us so honorably in this still very dangerous country.

Just before the elections, several news outlets reported that the Army had decided to keep our troops at their current level in Iraq for at least another 2 years. I have one of those stories here from the Tuesday, January 25, edition of the Washington Post. It is headlined, ''Army plans to keep Iraq troop level through '06.''

I want to read a portion of that story. It says:

With the Pentagon having relied heavily on reservists to fill out deployments to Iraq, military officers have warned recently that the pool of available part-time soldiers is dwindling. By later this year, when the Army is scheduled to begin its fourth rotation of troops since the invasion in March 2003, all 15 of the National Guard's most readily deployable brigades will have been mobilized.

Although other Guard troops remain and could be tapped for Iraq duty, they belong to units that historically have not received the same priority in equipping and training as the brigades chosen to go in the rotations so far.

''It doesn't mean that the cupboard is bare,'' Lovelace said. ''It just becomes a challenge then for the National Guard.''

As the Army reaches farther down in the reserve force, Lovelace said, the amount of ''pre-mobilization'' time necessary to get the troops ready to send to Iraq is likely to increase.

''We're not going to send anybody into combat who is not trained and ready'' the three-star general said. But he noted that already in each rotation, the amount of pre-mobilization time required has increased.

To continue to be able to draw on the better trained reservists, Army officials have said they are considering petitioning Rumsfeld to extend the 24-month limit on the total time a reservist could be caned to active duty.

Madam President, I ask that the full text of the story be printed in the RECORD.

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

[From the Washington Post, Jan. 25, 2005]

ARMY PLANS TO KEEP IRAQ TROOP LEVEL THROUGH '06—YEAR-LONG ACTIVE-DUTY STINTS LIKELY TO CONTINUE

(By Bradley Graham)

The U.S. Army expects to keep its troop strength in Iraq at the current level of about 120,000 for at least two more years, according to the Army's top operations officer.

While allowing for the possibility that the levels could decrease or increase depending on security conditions and other factors, Lt. Gen. James J. Lovelace Jr. told reporters yesterday that the assumption of little change through 2006 represents ''the most probable case.''

Recent disclosures that the Pentagon plans to beef up training of Iraqi security forces and press them into action more quickly has fueled speculation that the Bush administration could be preparing to reduce the number of U.S. troops significantly this year. As more Iraqi troops join the fight, the thinking goes, U.S. troops could begin to withdraw.

But Lovelace's remarks indicated that the Army is not yet counting on any such reduction. Indeed, the general said, the Army expects to continue rotating active-duty units in and out of Iraq in year-long deployments and is looking for ways to dip even deeper into reserve forces—even as leaders ofthe reserves have warned that the Pentagon could be running out of such units.

''We're making the assumption that the level of effort is going to continue,'' Lovelace said.

In a related development, Senate and House aides said yesterday that the White House will announce today plans to request an additional $80 billion to finance the wars in Iraq and Afghanistan. That would come on top of $25 billion already appropriated for the fiscal year that began Oct. 1. White House budget spokesman Chad Kolton declined to comment.

White House budget director Joshua B. Bolten is to describe the package to lawmakers today, but the budget request will come later, the aides said. Administration

officials have said privately for several weeks that they will seek the additional funding, the result of continuing high costs incurred battling an unexpectedly strong insurgency in Iraq.

Lovelace, who assumed his post of deputy chief of staff for operations in October, spoke to a small group of Pentagon reporters in what had been billed as an informal ''meet and greet'' session. The conversation quickly focused on the Army's planning for Iraq.

The number of U.S. Army and other forces in Iraq rose to 150,000 last month in what Pentagon officials described as an effort to bolster security ahead of Iraqi elections this weekend.

Lovelace made it clear that the Army's assumption about future U.S. force levels was not meant to prejudge likely trends in either Iraq's security situation or development of its security services. He said the planning is intended to ensure that enough units would be ready if needed and to give U.S. troops a basis on which to organize their own lives.

''It's really about us providing the predictability to our own soldiers,'' he said. ''It has nothing to do with the Iraqi army; it has everything to do with our own institutional agility.''

Asked about the Army's assumption, Lawrence T. Di Rita, the Pentagon's main spokesman, said he was ''not surprised'' to hear that the Army has chosen such a number, noting the need for service leaders to do such planning. ''But it's not going to be the Army's determination,'' he said. ''Ultimately, the determination will be made by the commanders'' in the field.

Defense Secretary Donald H. Rumsfeld's belief, Di Rita added, ''is that we will continue to see Iraqi security forces grow in capability. We will continue to see the need for the foreseeable period ahead to have a significant commitment of U.S. assistance as that capability develops. But there isn't anybody who has made any determination about timing or numbers.''

Rumsfeld and other senior officials are reviewing recommendations from Army Gen. Gary Luck about measures to accelerate the training and boost the performance of the Iraqi security forces. Luck, who has returned to Washington after visiting Iraq last week, has endorsed plans by field commanders to increase the number of trainers substantially. But this increase is to come by shifting the missions of U.S. troops already assigned to Iraq rather than by deploying more forces, officials said.

''I don't think anyone has a notion that we're talking about forces in addition to what's already out there,'' Di Rita said. ''It's a question of how to use those forces in a different way.''

With the Pentagon having relied heavily on reservists to fill out deployments to Iraq, military officers have warned recently that the pool of available part-time soldiers is dwindling. By later this year, when the Army is scheduled to begin its fourth rotation of troops since the invasion in March 2003, all 15 of the National Guard's most readily deployable brigades will have been mobilized.

Although other Guard troops remain and could be tapped for Iraq duty, they belong to units that historically have not received the same priority in equipping and training as the brigades chosen to go in the rotations so far.

''It doesn't mean that the cupboard is bare,'' Lovelace said. ''It just becomes a challenge then for the National Guard.''

As the Army reaches farther down in the reserve force, Lovelace said, the amount of ''pre-mobilization'' time necessary to get the troops ready to send to Iraq is likely to increase.

''We're not going to send anybody into combat who is not trained and ready,'' the three-star general said. But he noted that already in each rotation, the amount of premobilization time required has increased.

To continue to be able to draw on the better trained reservists, Army officials have said they are considering petitioning Rumsfeld to extend the 24-month limit on the total time a reservist could be called to active duty.

Mrs. MURRAY. Madam President, the effect of that policy is very clear. It means longer deployments, more time away from home, and a further strain on our entire military.

It is no secret that some of our soldiers are hit especially hard by this news. I am talking, of course, about our Guard and Reserve soldiers who have already faced extended deployments and long stretches away from their jobs, away from their homes, away from their families. We honor all of our troops serving overseas, but I am very concerned that these Guard and Reserve soldiers are not receiving some basic services and help that they have earned—basic services and help they most certainly deserve.

Last week I reintroduced legislation to increase services and benefits to members of the National Guard and Reserves when they are called to active duty. I offered this Guard and Reserve Enhancement Benefits Act last year to expand health care, education, financial benefits, and family assistance to help ease the burden on our Guard members and their families.

We made some progress in the Senate last year, but those important provisions were never signed into law. Now, in this new Congress, we have another opportunity to provide for our Guard men and women, our reservists, and all their families. This coincides with the introduction of S. 11, the first Democratic bill for this Congress. It is the first Democratic bill of this Congress to help increase protections for our troops and Reserve members.

Thousands of citizen soldiers from across my home State of Washington have been called to active duty over the past 2 years. These very brave men and women and their families deserve the same support that other military units receive when they sacrifice to serve our country. My bill tells Guard and Reserve members across America that we are committed to providing them and their families with the health, financial, and social support services necessary to get through this difficult time.

According to the Pentagon, 239,000 National Guard members have been called to active duty. Currently, 192,500 Guard and Reserve members are serving on active duty as part of Operation Enduring Freedom and Operation Iraqi Freedom. Thousands of Washington State Guard members have been activated over the past 2 years. This is the largest activation since World War II.

Hundreds of Washington State reservists have also been activated, and 150 local Marine Corps reservists will soon be deployed to Iraq as part of the Yakima-based Bravo Company 4th Tank Battalion. That is why this legislation is so important at this time.

As many other Members, I have sat and talked to our reservists as they have been called up, and I have talked with their families who have been left behind. It is critical that we provide the support and services they need so they can do this important job that this country has asked them to do.

My legislation would begin by extending the current Family and Medical Leave Act protections to the spouses of guardsmen and reservists called to extended active duty. This is really important. The families who are left behind are struggling as single parents to try to raise their family. They should not have to worry about losing their jobs and their income when their loved one is sent overseas. So the first part of our bill simply extends the Family and Medical Leave Act protections so these spouses who are left behind can take care of the issues they need to take care of as their spouse is called overseas.

Second, it provides childcare assistance grants to parents or guardians of dependents of guardsmen and Reservists called to active duty. This is really important. Most of these Guard and Reserve members are not on a base, so they don't have access to childcare facilities that Regular Army and other people have on the base. They are out in our communities, across my State and across this country.

So child care is especially important to them when their spouses are sent overseas and they are left with how to deal with child care—an issue that is always critical to families.

It becomes extremely critical when you lose half of your family, when they go to a place that can't help with child care. Childcare assistance grants are an important part of our package.

My bill also expands the GI bill for members of the Guard and Reserves who are called to active duty for 12 consecutive months or 24 months out of a 60-month period.

This is something that is really important. When we send these men and women overseas to serve, they should have access to the GI bill when they return so they can enhance their own lives and get a job and be productive members of our society.

Next, our bill provides relief from interest and defers payments of unsubsidized student loans.

I met with Reserve members before they left. Many of them were students or were just finishing college, and they were extremely worried about how they were going to pay their student loans while they were deployed, or when they returned before they would be able to get back into the job market and have a steady income. We put special help in our bill for these men and women who serve us by providing relief from interest and defer payments of unsubsidized student loans so they can

get their lives back together when they return before they start to pay back their obligation.

Next, our bill requires any college receiving Federal funds to offer students returning from active-duty service readmission without penalty or additional fees.

You can imagine, if you are in college attending classes and you are called up to serve your country as a member of the Guard and Reserve, you are concerned that when you return you will not be able to get back into that school and finish the college degree that you started. Our bill provides assurance to these students who have been called up that they will be readmitted into any college that receives Federal funds, so they will know when they return that they can continue their lives.

Next, we reduce the age for members of the Guard and Reserve to receive retirement pay. This is a critical issue for many of our Guard and Reserve families who face extreme hardship as their family member serves overseas. We want to make sure they can receive retirement pay at an age that benefits them.

Next, our bill requires the Federal Government to cover the pay differential for Federal employees who are called to active duty. When I talked to these Guard and Reserve family members, they were worried about how they were going to make sure their families would be able to pay the mortgage on their home, or how they were going to pay their school costs and put food on the table because of the reduced pay from the Government.

This bill will make sure the Federal Government that is calling these members up to serve pays the differential for our Federal employees so they do not lose income while they serve this country overseas.

Next, our bill allows employers to claim up to $15,000 in tax credits for the pay deferential of Guard and Reserve members. Across this country and in my home State, we have many businesses that have employees who have been called up to go overseas and serve their country. It is especially difficult for small businesses that lose their employees for 6 months, for 12 months, or longer. And this bill provides a tax credit to help them make up the pay of those employees when they go overseas.

Finally, our bill makes access to TRICARE permanent for all members of the Guard and Reserve and their families, regardless of employment or insurance status. This is an extremely important provision of this bill.

I think probably the No. 1 issue I heard from these families as I talked to them was, What do I need to do about our health care? We had our health care under a member who has been called to serve overseas. When we lose that, how do we transition? What do we do about a sick child with ongoing illnesses and family members with health care challenges? How do we get through this?

I think it is important that this year we enact into legislation assurance for the family members of those who serve overseas that their family left behind will have access to TRICARE and health care.

Tours of duty are being extended and new units are being deployed. I believe we have an obligation to ease the burden for these Guard and Reserve families.

Supporting our troops means more than just passing multibillion-dollar supplemental appropriations bills whenever the President asks. Supporting our troops must also mean that we look after the soldier and his family's well-being back at home. It means ensuring they get quality education, it means ensuring they get good health care, and it means access to a job, and childcare for their families.

I have spoken many times on this floor and in every corner of my State about the need to take care of our troops. Oftentimes, that means supplementing our floundering veterans care system. I talked about it on the floor extensively last week.

But with this legislation I am talking about today, we have an opportunity to provide help where it is needed now—help for the thousands of heroes and their families who are dedicating their lives to all of us by serving us around the globe.

I hope my colleagues will support our efforts. I look forward to working with anyone who will help move this legislation this year.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Illinois.

Mr. DURBIN. Mr. President, we were encouraged to learn yesterday that the administration has announced that it will support an increase in death benefits for our troops and their families. This has been a priority for the Democrats in Congress as well as many Republican Senators who have suggested it.

I have cosponsored legislation with Senator Mike DeWine of Ohio proposing increases in death benefits as well as health insurance and educational assistance for the families of those soldiers who lose their lives in service to our country.

In fact, one of the highest priorities on the Democratic side is a second bill standing with our troops which embodies that particular proposal that the President endorsed yesterday. But there is a lot more that needs to be done.

In the bill on the Democratic side, we proposed that there be additional provisions for our troops, and Guard and Reserve forces and their military families and American veterans. Unfortunately, we have not heard from the administration that they support these other proposals.

Let me tell you, though it is incredible to believe, if a soldier gives his life in service to his country today in combat, that soldier's family is entitled under the law to $12,000 in death annuity benefits—tax-free death benefits. Twelve thousand dollars is hardly enough to give to a spouse and her children when a soldier dies in combat. We have proposed that be increased at least to $100,000. I support a proposal that it also be increased by $25,000 for each dependent; that life insurance, if you can acknowledge that, is virtually the same thing—that this death benefit is going to be adequate to help that family through some extraordinarily challenging financial circumstances.

The bill that the Senate Democrats have proposed, S. 11, would also include systemic improvements to the Pentagon's ability to manufacture and distribute the best equipment to our troops, including $7 billion for the Army and Marine Corps to replace equipment destroyed in Iraq.

This provision will ensure that we pay death gratuities to fewer families in the future. Keeping our troops safe is the best thing to do to bring those soldiers home with their mission accomplished, and being attentive to the issue raised by the Tennessee Guardsman who stood up just a few weeks ago and asked Secretary Donald Rumsfeld, Why do I have to rummage through a dump to find pieces of metal to put on the side of my Humvee to protect myself? It was an embarrassing moment for the Secretary and for our country to think we spent billions of dollars and sent 251,000 of our best and bravest into harm's way in Iraq and have this circumstance.

We believe we must, in the first instance, let our troops have the training and the equipment they need to be safe. In addition, Democrats believe they should have full access to military TRICARE benefits, all reservists and their families. TRICARE is the health insurance for the military. There is a limitation. For example, if a combat soldier dies in the line of duty, the TRICARE benefits or health care benefits are extended to his dependents only for a 3-year period. That is unrealistic. If you have a young child in a family who lost a soldier overseas, we believe the TRICARE benefits should be extended until that young person reaches the age of 21. I believe it should be age 23 if they are going to college. That is a reasonable proposal. It was not in the suggestion of the administration yesterday, but we believe it should be included.

We also believe there should be tax incentives for private companies to make up the difference between civilian and active military pay when the reservists and guardsmen are called to duty, and a requirement that the Federal Government do the same.

This is a project that is near and dear to my heart. Twice on the floor of the Senate I had an amendment passed that said the Federal Government should make up the difference in pay for Federal employees who are activated as guardsmen or reservists to

serve in Iraq and other places around the world. We salute all the private companies that do that. Sears & Roebuck is a good example, and many others in my State—and many units of State and local government. But it is shameful to know and acknowledge that the Federal Government does not make up the difference in pay.

How can we say that all of these other companies did the right thing by standing by their employees who are risking their lives for America and the Federal Government does not do the same thing?

If someone has a pay check for $60,000 a year working for the Federal Government, and they are a member of the Illinois National Guard and activated for service and their military pay is only $40,000 a year, I believe the Federal Government should make up the difference of $20,000 a year. Private companies do it; State governments do it; local units of government do it. Why doesn't the Federal Government do it?

Twice we passed an amendment on the floor only to see it die in conference committee. I think it is important that this finally pass.

In addition, we want to repeal the prohibition against receipt of both the Survivor Benefit Plan and the Dependent and Indemnity Compensation so the soldiers can receive the full amount of the survivor benefit owed to them. We want to have full concurrent receipt for all disabled military retirees of both disability compensation and retirement provisions. We also want to guarantee funding for veterans health care.

We made a promise to the veterans of America—those who will be veterans and who are serving today, and those who served in the past. We promised that we will stand by them for their health care in the future. We have to put the money in our budget to make that promise good.

Finally, we want to expand the mental health services. This provision which we support will improve resources available to the estimated one out of every six military personnel in Iraq who are at risk of dealing with posttraumatic stress disorder.

It is a sad fact of life that many of these soldiers who witnessed horrendous events come back trying to resolve in their own minds the horror they have witnessed. We need to stand with them and give them a helping hand. I think that should be part of this administration's proposal.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, another issue that is, of course, timely and is brought up on a regular basis is the future of Social Security.

I believe there is a problem with Social Security. The President has said the same. However, I don't believe President Bush's plan to privatize Social Security is going to help. I think it is going to make the problem even worse.

Social Security should be strengthened, not weakened. Why isn't President Bush's plan the right way to save Social Security?

First, President Bush's plan would make deep cuts in the benefit paid under Social Security and in the process dramatically increase the deficit. The President's privatization plan for Social Security diverts money from the Social Security trust fund and creates an immediate cash-flow problem affecting seniors and those who are retiring right now.

We know that untouched the Social Security Program will pay every benefit promised with the cost-of-living adjustment until the year 2042, at a minimum. Some estimate 2052. For 37 to 47 years, Social Security is sound and solvent.

In comes President Bush who says we need to change Social Security. We need to take money out of the Social Security trust fund and allow people to create private accounts.

Private accounts may have some value. But what about the money the President just took out of Social Security? Unfortunately, the President has not suggested how we would pay back that money to Social Security. As a result of the President's proposal, if the Social Security trust fund is diminished in size and weakened, unfortunately, it will run out of money even sooner than the projection of 2042.

President Bush's plan to privatize Social Security does not make it stronger, it makes it weaker. The President cannot explain how he will make up for the money that he takes out of the Social Security trust fund. The President's privatization plan will cost up to $2 trillion in the first 10 years, and then up to $5 trillion in the second 10 years. It is an extremely expensive proposal.

Where would we come up with the money to make up the difference, $2 to $5 trillion? The President suggested we add it to the national debt, a national debt which has already reached a record level. How do we take care of our national debt? Who comes in and loans money to make up for a national debt? Mainly foreign governments; No. 1, Japan, China, and Korea. The President's proposal to privatize Social Security not only weakens Social Security, it creates a greater debt for Americans and forces us to be more dependent on foreign governments to loan us money. That is the only way we sustain our national debt today. That, of course, is a challenge. If those foreign governments, for whatever reason, decide not to buy America's debt, we are in a perilous position. We will have ourselves a debt and a situation where our interest rates will have to go up substantially to attract others to buy our debt.

That is not where America should be. That $2 trillion deficit will not bring us any closer to Social Security solvency. In fact, it makes the Social Security system that much weaker.

The President has said over and over his plan to privatize Social Security is voluntary. If you do not want to create a private account with the President's plan, he says you do not have to. That may be, but, understand, when the President takes money out of the Social Security trust fund leading to benefit cuts, those benefit cuts are going to affect people whether or not they choose to have a private account. To say it is voluntary is to overlook the obvious. The cost of this privatization plan will affect every Social Security retiree whether or not they want to sign up for President Bush's privatization plan.

The President argues Americans will do better in the stock market than they would if they wait for Social Security benefits. That is possible, but there are risks attached to investment. Every ad on television for a mutual fund or investment says the same thing: Past performance is no indication of future return. What they are saying is, there is risk involved. If you put your life savings, your retirement savings, into a private account under President Bush's plan, you may come out ahead, but then again you may not.

Relying on Wall Street is like playing retirement roulette. You may guess right, you may come out ahead, but those who are invested in mutual funds in the stock market over the last 4 or 5 years know there have been probably more losers than winners.

Keep in mind that under the President's plan, part of all of your retirement savings invested are going to be paid to Wall Street stockbrokers for so-called administrative fees that can reduce your benefits by 25 percent—a windfall for Wall Street at the expense of retirees across America.

Democrats want to encourage and support retirement accounts not at the expense of Social Security but in addition to Social Security. We should change the Tax Code to encourage people to save, encourage people to create individual retirement accounts, 401(k) plans. We can do that but not at the expense of Social Security—in addition to Social Security.

Some say private accounts would be more efficient. Keep in mind the President's Commission on Social Security came up with the only plan we have for private accounts so far, and they would call for a massive new Government agency to administer these Social Security private accounts. This Government board will control the investment accounts of some 47 million Americans and administer the program. The private accounts will cost the average senior $134,000 in lost Social Security benefits over a 20-year period. This is not the great positive thing that has been portrayed.

Young people like to invest money. That is a good thing. Savings and investment ought to be encouraged, particularly by young people. We need to make certain we do not have savings and investment at the expense of retirement benefits that workers have

paid for over their lifetime. People following this debate every day pay into Social Security with the understanding when they retire, this is going to be something they can count on. They may not be able to live in luxury with Social Security, but it is the nest egg, the cornerstone of your retirement income. The idea behind Social Security is still a sound idea. We should keep Social Security strong, we should strengthen it and do it on a bipartisan basis, but not at the expense of cutting benefits. That is what President Bush's privatization plan will do in addition to creating $2 trillion in additional debt. That does not help Social Security; in fact, it weakens Social Security. That should not be our goal.

I yield the floor and 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. THOMAS. I ask unanimous consent that the order for the quorum call be rescinded.

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

HONORING OUR ARMED FORCES

STAFF SERGEANT BRIAN BLAND, USMC

Mr. THOMAS. Mr. President, I today to express our Nation's deepest thanks and gratitude to a special young man and his family. I recently received word that on January 26, 2005, Marine SSgt Brian Bland of Newcastle, WY died in the line of duty while serving his country in the war on terrorism. SSgt Bland was killed, along with 30 of his brothers in arms when the CH 53E Super Stallion helicopter they were riding in crashed in western Iraq. The Marines were on their way to provide security operations for the recent Iraqi elections.

SSgt Bland was member of 1st Battalion, 3rd Marine Regiment out of Hawaii. He grew up in Newcastle and joined the Marine Corps after graduating from high school there in 1995. he had re-enlisted twice. He held a profound sense of duty and knew he was doing the right thing, telling family members shortly before the crash that he felt good about what he was doing in Iraq. He was very proud of being a Marine and had planned to stay in the service until he retired. He is remembered as one who enjoyed motorcycles and was friendly to everyone, and he took every opportunity to return to visit family and friends in Wyoming and South Dakota.

Because of people like Brian Bland we continue to live safe and free. America's men and women who answer the call of service and wear our Nation's uniform deserve respect and recognition for the enormous burden that they willingly bear. Our people put everything on the line everyday, and because of these folks, our Nation remains free and strong in the face of danger.

The motto of the Marine Corps is ''Semper Fidelis.'' It means ''Always Faithful.'' Through his selfless and courageous sacrifice, Staff Sergeant Brian Bland lived up to those words with great honor in that he willingly gave the last full measure so that others could live in freedom and liberty.

SSgt Bland is survived by his wife Stacey, his mother Beverly and stepfather Mark, his brother Jeremy, his grandmother Emma Lee, and his brothers of the United States Marine Corps. We say goodbye to a husband, a son, a brother, a Marine, and an American. Our Nation pays its deepest respect to SSgt Brian Bland for his courage, his love of country and his sacrifice, so that we may remain free. He was a hero in life and he remains a hero in death. All of Wyoming, and indeed the entire Nation, is proud of him.

So from one Marine to another, SSgt Bland, Semper Fi.

CORPORAL NATHAN SCHUBERT

Mr. JOHNSON. Mr. President, I rise today to pay tribute to Cpl Nathan Schubert, a member of the U.S. Marine Corps, who died on January 26, 2005, while serving in Operation Iraqi Freedom.

Corporal Schubert was a member of the 1st Battalion, 3rd Marine Division based out of Kaneohe Bay, HI.

Answering America's call to the military, Corporal Schubert joined the U.S. Marines in October 2001. His brother, Matthew, remembers him as a skilled athlete and a pheasant hunter. Corporal Schubert was carefree and a bit of a joker. His sister, Elizabeth, remembered that, ''He would sometimes wrap stuff from around the house to give as gag gifts.''

Corporal Schubert courageously served our country with great distinction and, as a hero, died as a proud member of our Armed Forces. He served as a model of the loyalty, dedication, and military professionalism that is required for the preservation of freedom. The thoughts and prayers of my family, as well as our Nation's, are with his family during this time of mourning. As well, our thoughts continue to be with all those families who have children, spouses, parents, and other loved ones serving overseas.

The lives of countless people were enormously enhanced by Nathan's goodwill and service. He inspired all those who knew him and our Nation is a far better place because of his life. All Americans owe Nathan, and the other soldiers who have made the ultimate sacrifice in defense of freedom, a great debt of gratitude for their service.

I join with all South Dakotans in expressing my sympathies to the friends and family of Corporal Schubert. I know that he will always be missed, but his service to our Nation will never be forgotten.

NOMINATION OF ALBERTO GONZALES

Mr. THOMAS. Mr. President, I rise in support of the nomination of Alberto Gonzales to be our next Attorney General. Certainly his life story embodies the American dream: Son of immigrant farmers, the first in his family to go to college, attended Rice University, Harvard Law School, now nominee to be our Nation's first Hispanic top law enforcement officer.

I am troubled by some remarks unfairly distorting his honorable record. I am concerned, as well, that the Senate is losing some of its civility, which is what makes our Chamber unique.

I cannot think of anyone who would do a better job than this man as U.S. Attorney General. I support him.

I yield to my friend from Montana.

Mr. BURNS. I thank my friend from Wyoming.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Could the Senator arrange some more snow to Montana?

Mr. THOMAS. We are not ready yet.

Mr. BURNS. Mr. President, I am in support of the nomination of Judge Alberto Gonzales for Attorney General of the United States. We have all heard his life story. I can relate to that somewhat because he grew up in Texas. I grew up in Missouri, starting out on 160 acres consisting of two rocks and dirt. He comes to this job with a different perspective.

When we look down the line of the nominees the President has sent to the Senate for confirmation, we can see there are a lot of calluses, a lot of dirt under their fingernails. That is what he brings to this job.

We congratulate the former Attorney General. John Ashcroft has done a wonderful job on the heels of September 11. As the primary law enforcement officer, he was not only in charge of law enforcement on the domestic side but had a lot to do around the world with the collection of intelligence, coordinating, protecting.

We are in a time where we do not get smacked and then just simply pick up the pieces and continue. We are in the business of preempting activities. When these nominees come with a different perspective, a ground-level perspective, everything they do touches American lives.

I commend Judge Gonzales for accepting the President's call to service. It is a thankless job if you look at the dollars. Yet it carries with it great responsibilities.

We are quickly learning how to adapt to the threat of terrorism. In an attempt to make all Americans safe, we have changed policy and government structure dramatically. In a free society, a mobile society this makes our job even more difficult.

The groundwork we have laid and will continue to build upon is what makes us a great nation. The United States is a world model for picking up the pieces, adapting to new challenges.

I am hopeful and confident Judge Gonzales will continue that legacy in his new position. He is a man of great integrity. I encourage all my colleagues to entrust him with the honor and responsibility of being our next Attorney General.

I also take a few moments to formally thank Attorney General John Ashcroft for his tremendous service the past 4 years. I have a personal relationship with the Ashcroft family and understand what he went through in the last 4 years. He has done his job with great dedication and integrity. He is a man who put the right people in the right places at the right time.

He has served us well. He reorganized the Department of Justice with new directives, new directors. I thank him. His friendship, his service to the country, should not go unnoticed and unappreciated. He has done a tremendous job in very stressful times. I venture to say for an Attorney General, no time has been more stressful than the time John Ashcroft has hung his hat as Attorney General downtown.

We welcome the nominee. We have the highest hopes for him. We wish him not only good luck but good hunting. We also thank the outgoing Attorney General.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order, the hour of 10:45 a.m. having arrived, the Senate will proceed to executive session for the consideration of Executive Calendar No. 8, which the clerk will report.

The assistant legislative clerk read the nomination of Alberto R. Gonzales, of Texas, to be Attorney General.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, we are proceeding at the moment to the nomination of White House Counsel Alberto Gonzales to be Attorney General of the United States of America. He had served as a judge on the Supreme Court of Texas and has been commonly referred to as Judge Gonzales, which I shall do during the course of my presentation.

Judge Gonzales, 49, comes to this nomination to be the chief law enforcement officer of the United States with an extraordinary record.

He was one of eight children, sharing a two-room living quarters with their parents. They had no hot water, no telephone. He pursued an academic career, first at the military academy; then at Rice University, where he graduated; and then at the Harvard Law School.

He went into the private practice of law and then was asked by then-Governor George Bush to work with him in the Governor's office.

Judge Gonzales then, as noted, was a justice of the Supreme Court of Texas. With the election of Governor Bush to the White House, Judge Gonzales has been White House Counsel for the last 4 years.

It is not irrelevant to note that Judge Gonzales would be the first Hispanic to be Attorney General of the United States. That is quite a dramatic rise in the legal community.

When I was elected district attorney of Philadelphia some time ago, in 1965, there was not a single Hispanic lawyer in Philadelphia. At that time, I made an effort of outreach to bring minority representation into the district attorney's office as assistants and could not find a single Hispanic. So there has been a great deal of progress. Now there are Hispanic Federal judges in Philadelphia, State court judges, city solicitors, prominent attorneys, but Judge Gonzales would be the first Hispanic to be Attorney General of the United States, if confirmed.

He will bring, I think, a unique perspective because of his minority status. I think he would have a broader view, a different view on civil rights. We have an issue which is subject to some congressional oversight where some 762 alien detainees were rounded up after 9/11, and according to a report by the Inspector General of the Department of Defense, there was never any showing of connection to terrorism or to al-Qaida or to any reason for their detention.

While we know we live in a very dangerous world, there has to be some reason—it may not be as strong as probable cause for an arrest, or probable cause for search and seizure, or even sufficiency for stop and frisk—but there has to be a reason for detention. That is something of which I think Judge Gonzales might have some greater perspective.

Judge Gonzales, I think, also would be expected to have a broader view on the immigration laws, being Hispanic, being from Texas, seeing the kinds of problems which are present both from the point of view of stopping illegal immigrants and also from the point of view of immigrants who come to this country who seek a better way of life.

Similarly, I think he might have some greater insights into voting rights. He took a position broadly viewed as divergent from the administration on affirmative action in the controversial cases involving the University of Michigan. Affirmative action, always a complicated, controversial subject, but one where differing views and a broader perspective is a quality that would be well served in the Attorney General of the United States.

He also took a broader view on the issue of what was required on parental notification under the Texas statute, drawing opposition from some on the so-called right of the party. There again, a little different view and a little broader view reflective of his background and his own attitudes.

A great deal of the hearing process on Judge Gonzales has been involved on the issue of compliance with the Geneva Convention, on compliance with the statutes of the United States which prohibit torture. A great deal has been made of a statement made by Judge Gonzales with respect to the Geneva Conventions. He has been broadly quoted on a statement that some of the Geneva Convention's limitations are obsolete or quaint. In an opinion which he circulated, he said this:

> In my judgment, this new paradigm—

referring to what has happened after 9/11—

> renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.

That part of the statement is the one always quoted, and the comment on ''quaint'' and the comment on ''obsolete'' have drawn a lot of criticism. But almost nowhere has there been a followup on what he was referring to. But what he said, continuing:

> . . . renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip—i.e., advances of monthly pay—athletic uniforms and scientific instruments.

Well, when you see the reference here to ''items like commissary privileges,'' I don't know that that would be exactly something to be concerned about on a prisoner, or scrip or advances of monthly pay or athletic uniforms or scientific instruments. So in that context, to say it is ''quaint'' or ''obsolete'' is not to challenge the underlying provisions of the Geneva Convention on its important substantive provisions.

In Judge Gonzales's statements and testimony before the Judiciary Committee, he has been very emphatic about his personal opposition to torture and about the opposition of the administration to torture. He has been emphatic on his opposition to transporting detainees to other countries which permit torture to enable detainees to be tortured in other countries where they could not be under the auspices of the United States. He has been explicit in articulating the view that the CIA is bound by the same rules prohibiting torture as anyone else.

He has come under considerable criticism for the so-called Bybee memorandum which was issued in August of 2002, signed by Jay Bybee, then Assistant Attorney General of the United States, where the memorandum was requested so that there would be a full

statement and an understanding of what the law required to comply with the statutes prohibiting torture in the United States.

That memorandum was erroneous in its legal conclusions, as has been generally agreed to, and has been withdrawn by the Department of Justice. The interpretation of what constituted torture was very extreme, referring to the kind of excruciating pain and loss of bodily function, certainly not a realistic or an adequate or a definition of torture which would withstand legal analysis or legal scrutiny.

The memorandum was extreme and excessive in a statement, an articulation of executive power. One example was the statement that the President of the United States had as much authority on questioning of detainees as the President had on battlefield decisions, which obviously makes no sense. When you talk about a battlefield decision, that is a prerogative of the Commander in Chief, as it is delegated down through field commanders. But that kind of authority does not reside in the President on an issue such as the questioning of detainees.

The memo went quite far in suggesting that the President had authority to ignore statutes if he felt they were unconstitutional. There has been some question raised, although it is not explicit in the Bybee memo, about the authority of the President to immunize those who violate the law. That certainly is not lawful. When you talk about immunizing, you talk about judicial action in the context where there is a statute by the Congress of the United States authorizing immunity in a given context, immunity from criminal prosecution to disclose some information, but there is no suggestion anywhere that the President has the authority to immunize executive branch officials from noncompliance with the law.

We find Judge Gonzales essentially working as White House counsel, working for the President in a role which he was very emphatic in distinguishing from the role of the Attorney General of the United States. As Attorney General he has a responsibility to represent all of the people. As counsel to the President, as White House counsel, his responsibility is limited only to the President.

The memorandum by the Department of Justice was requested in order to have the legal interpretation as to what the appropriate line of questioning could be in order to be in compliance with the law. That was the role of the Department of Justice. It was not the role of Judge Gonzales. Then the decision as to what the questions would be, what the interrogation would be is the role of the Department of Defense, again, not the role of Judge Gonzales.

Judge Gonzales has been very forthcoming, being available and meeting with some 27 Senators, which is said to be a record in being available to everyone on the Judiciary Committee and beyond, submitting to up to four rounds of questioning, 10 rounds each, and then in some cases the third round of 15, and in one case the fourth round of 22 minutes, and then responding to very broad questions, with the New York Times commenting that the responses of more than 200 pages of answers to questions was the most expansive view by the administration of its techniques and procedures on the questioning of detainees. So there is no doubt that Judge Gonzales has responded very broadly to the inquiries made of him.

There has been a challenge that he has not answered all the questions because he could not recall specific conversations which were held years before, but that is entirely understandable.

There were questions about discussions where representatives of the executive branch got together to discuss the specifics of the Department of Justice memorandum and the interrogation techniques to be employed by the Department of Defense. One of his answers to one of the written questions propounded gives a fair summary in a fairly abbreviated form as to Judge Gonzales's role. These are his words:

Shortly after September 11, 2001, until the present, the administration has been involved in conducting the war on terror by gathering as much information from terrorists as we possibly can within the bounds of law. During that time, I have participated in several meetings at which possible uses of methods of questioning were discussed. These meetings may have included from time to time representatives from the National Security Council, the Department of State, the Department of Justice, the Department of Defense, the Central Intelligence Agency, and others. In the meetings I attended, agencies' representatives raised concerns that certain terrorists had information that might save American lives. The participants shared a desire to explore whether there existed methods of questioning these terrorists that might elicit that information. It was always very clear that we would implement such methods only within the bounds of the law.

That would bear repeating, ''always very clear that we would implement such methods only within the bounds of the law.'' Judge Gonzales continues:

As counsel to the President, my constant emphasis and interest was on the last factor, ensuring compliance with the law. It would not have been appropriate for me to comment on issues such as whether a particular individual may have information that would be helpful to the effort to save American lives or to defeat terrorists or whether a certain procedure for questioning that individual would be effective in eliciting that information. Others with more relevant experience, expertise, and information were responsible for making those judgments. Instead it was my responsibility to ensure that any method they deemed appropriate and effective from an operational point of view was considered lawful by the Department of Justice. To the extent I was involved in recommendations, results, and assignments arising out of such meetings, my activities were directed toward ensuring that those with operational responsibilities would act only after receiving the judgment of the Department of Defense that a proposed course of action was lawful.

That is the end of Judge Gonzales's statement on that. His role was reasonably, clearly delineated. He represented the President. He was responsible for saying what were the outlines of the law, or what was lawful. Those practices were defined by the Department of Justice Office of Legal Counsel, which has the responsibility to do that. And then anything beyond the legal techniques of the questions would lie with those who have the expertise, as he described it, and the experience, and the responsibility from the Department of Justice or from the Central Intelligence Agency.

There was one other statement by Judge Gonzales in response to a question by Senator KENNEDY, which I think is a summary, which delineates his own role. When asked about a specific newspaper article and about events that occurred several years before, Judge Gonzales replied:

Sir, I don't have any specific recollection. I read the same article. I don't know whether or not it was the CIA [that was in reference as to whether it was a CIA request]. What I can say is that after this war began against this new kind of threat, this new kind of enemy, we realized that there was a premium on receiving information. In many ways, this war on terror is a war about information. If we have information, we can defeat the enemy. We had captured some really bad people who we were concerned had information that might prevent the loss of American lives in the future. It was important to receive that information, and people at the agencies wanted to be sure that they would not do anything that would violate our legal obligations, so they did the right thing; they asked questions—what is lawful conduct, because we don't do anything that violates the law.

So here again is a capsule statement of Judge Gonzales's role. He is representing the President. He is not looking to determine what the appropriate scope of conduct is. That is a matter to be determined by those who are involved in questioning the detainees.

That is the essence of what I believe—to be succinct and to the point of the issue. There are a great many other responses that could be read, a great many other arguments that could be advanced. I will reserve further responses on this matter as the course of the argument develops.

I thank my colleague, Senator HATCH, for coming early in the proceedings to make a cogent argument.

Mr. President, I have sought recognition today to state my support for the nomination of Alberto Gonzales to be Attorney General of the United States.

First, I would like to describe Judge Gonzales's personal background. He has had an extraordinary life and career. His personal story is one of dedication and courage—the sort of story

that is possible only in America, where the dreams of even the most humble citizens can be achieved through hard work and discipline.

Judge Gonzales was born in San Antonio, Texas, and raised in the small town of Humble, just outside of Houston. Although he and his seven siblings shared a two-room house that lacked either a telephone or hot running water, Judge Gonzales refused to be deterred by his difficult circumstances. He journeyed through Texas public schools, graduating from a Texas high school. Judge Gonzales then chose to serve his country by joining the Air Force and serving for approximately 2 years before entering the United States Air Force Academy for a 2-year stint. Shortly thereafter, he accomplished his childhood dream of graduating from Rice University. Following his graduation from Rice, Judge Gonzales went on to graduate from the Harvard Law School.

In June of 1982, he joined the law firm of Vinson & Elkins in Houston, TX, where he later became a partner. Not content merely to practice law without giving back to the profession, Judge Gonzales also taught law as an adjunct professor at the University of Houston Law Center.

The opportunity for service arose again when then-Governor Bush asked Judge Gonzales to leave his law firm to become the Governor's General Counsel. Thereafter, Judge Gonzales embarked upon a distinguished career in public service, including service as Texas's 100th Secretary of State from December 2, 1997 to January 10, 1999.

In what would be a capstone for many lawyers' careers, in 1999 Judge Gonzales was appointed a Justice of the Supreme Court of Texas—a job he loved, and the reason he is still today known as Judge. Although he enjoyed his job on the Texas Supreme Court, the President called upon him to serve his country as the White House Counsel, a position he filled throughout the administration's first term.

Mr. President, no one in the Senate could take issue with Judge Gonzales's remarkable rise to prominence, and the obvious talent and ability that fueled it. Indeed, I think we are all in agreement about that. Nevertheless, Judge Gonzales finds himself confronting substantial opposition from my colleagues across the aisle. The purported reasons do not justify the opposition.

First, the opponents of Judge Gonzales have succeeded in confusing the public about his views on torture. To listen to Judge Gonzales's critics, one would think that the policy of the United States was to promote or sanction torture, and that Judge Gonzales somehow established such a policy. Last week, for example, the senior Senator from Massachusetts stood on the Senate floor and accused Judge Gonzales of being a participant ''in the shameful decision by the administration to authorize the torture of detainees at Guantanamo and in Iraq.'' That charge is simply false. In fact, the White House has made very clear that the United States policy and law prohibit torture, and the President himself has insisted upon humane treatment for detainees. Judge Gonzales has been emphatic in his agreement with this position. When asked, point blank, by the senior Senator from Illinois whether U.S. personnel can legally engage in torture under any circumstances, Judge Gonzales answered: ''Absolutely no. Our policy is we do not engage in torture.'' To which my colleague replied: ''Good. I am glad that you have stated that for the record.''

Despite that exchange, and others like it, some critics, including the editors of the Washington Post and New York Times, have mischaracterized Judge Gonzales's answers to the committee's questions. In its editorial of January 26th, the Post claimed that Judge Gonzales had asserted the administration's right to, among other things, ''transport [foreigners] to countries where torture is practiced.'' In response to a question on this topic posed by my colleague from Massachusetts, however, Judge Gonzales wrote: ''The policy of the United States is not to transfer individuals to countries where we believe they likely will be tortured, whether those individuals are being transferred from inside or outside the United States.'' He added, ''I am not aware of anyone in the Executive Branch authorizing any transfer of a detainee in violation of that policy.''

In case this was not clear enough, Judge Gonzales reiterated to the Senator from Massachusetts: ''United States policy is clear—the President has directed that the United States is not to engage in torture anywhere in the world and is not to transfer detainees from anywhere in the world to other countries where they likely will be tortured.''

In the New York Times editorial, also dated January 26th, it is argued that the ''biggest strike against Mr. Gonzales'' is the fact that a ''now repudiated'' Justice Department memorandum giving a ''narrow definition of torture'' was addressed to him. This ignores several facts: First, Congress—not the Administration—enacted the definition of ''torture.'' In 1994, Congress defined torture as ''an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.''

The now repudiated Justice Department memorandum suggested that ''severe physical pain,'' as used in the torture statute, should be construed narrowly to mean the type of pain ordinarily ''associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions—in order to constitute torture.'' But, Judge Gonzales was not the author of this offending language, and—as I will discuss at greater length later—he has rejected this narrow view of what constitutes torture.

Moreover, while the memo has now been repudiated and replaced by one widely acknowledged to be more appropriate, neither memo altered the President's policy that detainees are to be treated humanely.

The Times editorial also cites a leaked draft memorandum from Judge Gonzales to the President. Some on the Judiciary Committee, including the Ranking Minority Leader from Vermont and the senior Senator from Massachusetts, have mischaracterized this draft memo as a disavowal of the Conventions. Again, this ignores what Judge Gonzales has written and said. The language from the leaked memorandum is often taken out of context. The relevant passage reads as follows:

> The nature of the new war [against terrorism] places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e., advances of monthly pay), athletic uniforms, and scientific instruments.

At his hearing, Judge Gonzales reasserted his commitment to the Geneva Conventions as a whole. He told the Judiciary Committee in no uncertain terms: ''I consider the Geneva Conventions neither quaint nor obsolete.'' And he stressed that, ''[t]he President has repeatedly condemned torture and made clear that the United States will not condone torture.'' When asked about potential changes to the Conventions, he noted: ''I'm not suggesting that the principles of Geneva regarding basic treatment, basic decent treatment of human beings, should be revisited. That should always be our polestar.'' Further, in response to another Democratic Judiciary Committee Member, Judge Gonzales reiterated, ''Yes, I do denounce torture, and if confirmed as Attorney General, I will prosecute those who engage in torture.''

Finally, none of those standing in opposition to Judge Gonzales has come close to articulating a viable case for linking the actions of Judge Gonzales to the so-called ''migration'' of a flawed interrogation policy to the atrocities committed at Abu Ghraib, and perhaps elsewhere. Despite multiple investigations, including several discussed at our hearing, no one has established a link—even an attenuated one—between Judge Gonzales and improper interrogation techniques in the field; I have yet to see anything other than supposition and conjecture.

So, Mr. President, I think that Judge Gonzales has been clear about the United States' policy and his own views against torture, leaving no

meaningful basis to oppose his nomination on such grounds.

As I have already indicated, another issue that has been misrepresented by Judge Gonzales' opponents is his stance with respect to the Office of Legal Counsel's memorandum on the anti-torture statute, the so-called Bybee memo.

At the Judiciary Committee's last Executive Meeting, the senior Senator from Massachusetts suggested that Judge Gonzales had failed to reject the memorandum. The record established the contrary. For example, Judge Gonzales has rejected the Bybee Memorandum's overbroad statement of Executive authority. In response to the Committee's questions about the memorandum, Judge Gonzales said:

It has been rejected, including that section regarding the Commander-in-Chief's authority to ignore the criminal statutes. So it has been rejected by the Executive Branch. I, categorically, reject it. And, in addition to that, as I have said repeatedly today, this administration does not engage in torture and will not condone torture.

During his hearing, I asked Judge Gonzales: ''Do you agree with the statement in the memo, 'Congress may no more regulate the President's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield'?'' Judge Gonzales answered: ''I reject that statement, Senator.'' This is a clear and unequivocal answer.

Moreover, Judge Gonzales has explicitly recognized that Presidential authority in this area is indeed limited. Among other things, he has noted:

We in the executive branch, of course, understand that there are limits on Presidential power. We are very, very mindful of Justice O'Connor's statement in the Hamdi decision that a state of war is not a blank check for the President of the United States with respect to the rights of American citizens. I understand that and I agree with that.

In addition, at his confirmation hearing, Judge Gonzales testified that he did not agree with the portion of the Bybee Memorandum stating that severe physical pain, as used in the torture statute, was limited to pain equivalent to organ failure, impairment of bodily function, or even death. In response to a question from the Committee's Ranking Member, for example, Judge Gonzales agreed that horrific conduct, such as cutting off someone's finger, would be considered torture. Nevertheless, at the Executive Meeting, the Senator from Massachusetts continued to suggest that Judge Gonzales might somehow condone conduct such as, ''[b]eating you, suffocating you, ripping out your fingernails, burning you with hot irons, suspending you from hooks, putting lighted cigarettes in your ear.''

Such hyperbole, Mr. President, serves to highlight the fact that arguments against Judge Gonzales have ignored significant statements by this nominee. Judge Gonzales has taken important steps towards accommodating the legislative branch of government through his rejection of the Bybee dicta and his concessions on the limits of presidential power. Ignoring such efforts is the wrong way to approach such an important nomination and the wrong way to assess such a fine and worthy nominee.

On a related note, my colleague from Massachusetts and other critics, including the New York Times, have seized upon the fact that the President's February 2002 directive regarding the humane treatment of prisoners is addressed to the Nation's Armed Forces to suggest that somehow the CIA has been operating without legal constraints. The senior Senator from Massachusetts, for example, has alleged that Judge Gonzales ''evaded answers to questions about whether the CIA can abuse prisoners, even if the military is prohibited from doing so.'' This is directly contradicted by Judge Gonzales's responses to the Judiciary Committee's written questions. For example, Judge Gonzales has written:

The CIA and other intelligence agencies are fully bound by the prohibition on torture contained in 18 U.S.C. §2340 and §2340A and, depending on the circumstances, by other criminal statutes such as those defining crimes in the special maritime and territorial jurisdiction of the United States. Those statutes prohibit, for example, assault (18 U.S.C. §113) and maiming (18 U.S.C. §114). These criminal prohibitions prevent abuse of detainees by intelligence officers. In fact, the Department of Justice is currently prosecuting a CIA contract employee for various charges of assault under 18 U.S.C. §113.

Despite such answers, my colleague from Massachusetts continues to accuse the administration of sending ''the message that anything goes to our troops and intelligence officers in the field.'' To the contrary, Judge Gonzales has stressed that the ''CIA and other intelligence agencies are fully bound'' by the laws against torture. And, as further noted by Judge Gonzales, the CIA and other agencies have sought Department of Justice guidance concerning the boundaries emanating from U.S. obligations under, for example, Article 16 of the Convention Against Torture.

In fact, let me take a moment to address Article 16 directly. Some have suggested that the administration's interpretation of Article 16 has been used to justify or facilitate the cruel, inhumane or degrading treatment of aliens overseas. Just last week, for example, the senior Senator from Massachusetts accused Judge Gonzales of saying ''that the CIA is not bound by the prohibition on cruel, inhumane and degrading treatment in Article 16 of the Convention Against Torture.'' Again, this ignores the testimony of Judge Gonzales. At our hearing, Judge Gonzales noted that, when the Senate ratified the Convention Against Torture, it took a reservation equating the requirements under Article 16 with the requirements under the Fifth, Eighth, and 14th Amendments. Judge Gonzales further acknowledged that, when interpreting these requirements, the Administration has looked to Supreme Court precedents holding that aliens interrogated by U.S. personnel outside the United States enjoy no substantive rights under the Fifth, Eighth, and 14th Amendment. Nevertheless, regardless of the debate about the strict legal requirements of Article 16, Judge Gonzales testified that the administration has sought ''to be in compliance as a substantive matter under the Fifth, Eighth, and 14th Amendment.'' He also testified that, to the best of his knowledge, the United States has met its substantive obligations under the Fifth, Eighth, and 14th Amendments. This commitment has often been overlooked by the Judge's opponents.

Contrary to the claims of his critics, Judge Gonzales also acknowledged that, based on his review of the relevant investigations, the responsibility for what happened at places like Abu Ghraib extends further up the chain than the culpable guards. The Senator from Massachusetts accuses Judge Gonzales and others in the administration of a ''continuing effort to pin the blame for the torture scandal on a few bad apples among our solders.'' In reality, however, Judge Gonzales testified:

The reports [by Schlesinger, Faye, Kearns and others] seem to indicate that there was a failure, there was a failure of discipline amongst the supervisors of the guards there at Abu Ghraib, and also they found that there was a failure in training and oversight at multiple layers of Command Joint Task Force 7. And so I think there was clearly a failure well above the actions of the individuals who actually were in the prison. At least that's what the reports seem to indicate, as I review them.

At the same time, he rejected the notion that inhumane treatment was tolerated or encouraged as a matter of course. He pointed out, for example, that, even within Abu Ghraib, the gross misconduct of the night shift was aberrant:

The findings in these eight reports universally were that a great majority, an overwhelming majority of our detention operations have been conducted consistent with American values and consistent with our legal obligations. What we saw happen on that cell block in the night shift was limited to the night shift on that cell block with respect to that first category, the more offensive, the intentional severe physical and the sexual abuse, the subject of those pictures. And this isn't just Al Gonzales speaking. This is what, if you look at it, the Schlesinger report concludes. And so what you see is that you have got this kind of conduct occurring at the night shift, but the day shift, they don't engage in that kind of conduct because they understand what the rules were. And so I respectfully disagree with the characterization there was some sort of permissive environment.

Once again, on this point as with others, the Judge's own words refute the accusations of his critics.

Some of my colleagues have also seized upon Judge Gonzales's inability to recall certain details of meetings that occurred more than 2½ years ago

to suggest that we lack sufficient information to make an informed decision about his nomination or that Judge Gonzales is being less than forthcoming when he asserts he cannot recall a matter. Last week, for example, the senior Senator from Massachusetts told the Judiciary Committee that Judge Gonzales ''refuses to tell us anything about those meetings.''

In fact, the Senator from Massachusetts had several exchanges with Judge Gonzales on this topic at our confirmation hearing. The Senator queried, for example: ''I just want to point out, if it is true, as the Post reported, that you held several meetings at which the legality of interrogation techniques, such as threat of live burial and waterboarding were discussed; do you remember that?'' Judge Gonzales responded:

Senator, I have a recollection that we had some discussions in my office, but let me be very clear with the Committee. It is not my job to decide which type of methods of obtaining information from terrorists would be most effective. That job responsibility falls to folks within the agencies. It is also not my job to make the ultimate decision about whether or not those methods would, in fact, meet the requirements of the anti-torture statute. That would be a job for the Department of Justice. And I never influenced or pressured the Department to bless any of these techniques. I viewed it as their responsibility to make the decision as to whether or not a procedure or method of questioning of these terrorists that an agency wanted, would it, in fact, be lawful.

Given the passage of time, his inability to recall precise details is understandable. Moreover, it must be viewed in the context of what he has recalled and provided to the committee. Among other things, he has: acknowledged his participation in meetings where the questioning of detainees was discussed; explained the genesis and purpose of such meetings; described the limited nature of his role; and explained the result of these meetings. In one lengthy written answer to a question posed by my colleague from Massachusetts, for instance, he explained:

Since shortly after September 11, 2001 until the present, the Administration has been involved in conducting the War on Terror by gathering as much information from terrorists as we possibly can within the bounds of law. During that time, I have participated in several meetings at which the possible use of methods of questioning were discussed. These meetings may have included, from time to time, representatives from the National Security Council, the Department of State, the Department of Justice, the Department of Defense, the Central Intelligence Agency, and others. In the meetings I attended, agencies' representatives raised concerns that certain terrorists had information that might save American lives; the participants shared a desire to explore whether there existed methods of questioning these terrorists that might elicit that information; and it was always very clear that we would implement such methods only within the bounds of the law. As Counsel to the President, my constant emphasis and interest was on the last factor—ensuring compliance with the law. It would not have been appropriate for me to comment on issues such as whether a particular individual may have information that would be helpful to the effort to save American lives or defeat terrorists, or whether a certain procedure for questioning that individual would be effective in eliciting that information. Others with more relevant experience, expertise, and information were responsible for making those judgments. Instead, it was my responsibility to ensure that any method they deemed appropriate and effective from an operational point of view was considered lawful by the Department of Justice. To the extent I was involved in recommendations, results, and assignments arising out of such meetings, my activities were directed toward ensuring that those with operational responsibility would act only after receiving the judgment of the Department of Justice that a proposed course of action was lawful.

That answer provides a good deal of information. The fact that he cannot recall details of those meetings is understandable. It is commonplace to forget details of meetings, particularly when years have passed. It is certainly not, given the responses that have been made, a reason to oppose someone who is universally praised for his ability and integrity.

Since his nomination, the White House has offered every Committee member a personal, private meeting with Judge Gonzales. To date, the Judge has met personally with 14 members of the Judiciary Committee, and more than a dozen other Senators.

At his hearing, Judge Gonzales testified for nearly 6 hours, answering multiple rounds of questions. There were three rounds of questions, and I encouraged Senators to participate in each round. After a complete and lengthy first round, 9 Senators participated in a second round of questions. After that, 4 Senators including myself took advantage of the third round. I made sure every Senator had ample opportunity to question Judge Gonzales. Indeed, one Senator was ultimately granted a fourth round of questions.

Contrary to the assertion by the Senator from Massachusetts that Judge Gonzales was unresponsive and he made ''a mockery of the notion of congressional oversight and accountability,'' Judge Gonzales's answers to the committee's written questions, contained in 221 single-spaced pages, provided nearly 450, often detailed, responses on issues ranging from the war on terrorism to intellectual property. So thorough was Judge Gonzales's response that the New York Times (January 19, 2005) stated that Judge Gonzales's answers to the committee's written questions comprised ''one of the administration's most expansive statements of its positions on a variety of issues, particularly regarding laws and policies governing C.I.A. interrogation of terror suspects.''

The questions kept pouring in even after the committee's hearing record closed on Thursday, January 13th, with 4 Senators submitting more than 40 additional questions for the nominee. Judge Gonzales has now responded to all of those supplemental questions. In 27 additional pages of questions and answers, Judge Gonzales has further clarified his position on several issues. He also furnished a remarkable 93-page memorandum on the Geneva Conventions prepared by the State Department as well as a letter reiterating his role in a court appearance for then-Governor Bush.

These facts refute the claims that Judge Gonzales has failed to provide us with sufficient information to evaluate his nomination.

Nevertheless, the Judge's opponents continue to clamor for more. At the executive meeting, for example, the senior Senator from Massachusetts complained that Judge Gonzales had ''not conducted a search for . . . requested documents.'' In fact, my colleague said it would be ''hard to imagine a more arrogant insult to this Committee's oversight responsibility.''

I requested that a search be conducted for any draft or final memoranda or other documents written by Judge Gonzales and relevant to the subject of interrogation techniques or torture. The White House responded by conducting a search.

On January 19, 2005, at the direction of the White House Chief of Staff, David Leitch, Deputy Counsel to the President, supervised a search of certain electronic records available in the Office of Counsel to the President. Specifically, he searched for word processing documents containing the words ''torture'' or ''interrogation'' that were located on (1) the shared Counsel's Office directory, (2) the personal and network directories used by Judge Gonzales and his assistants, or (3) the hard drive of Judge Gonzales's computer.

According to the White House, based on the practices concerning documents created by Judge Gonzales, there is a very high probability that any document of the sort described would have been identified as a result of this search. I have been advised, however, that no such documents were identified by the administration.

Moreover, the White House has represented, and Judge Gonzales confirmed, that he has no notes reflecting discussions at any meetings concerning these topics, nor does the White House believe there are any notes taken by Judge Gonzales in the files of the office.

Finally, I have been advised that, during Judge Gonzales's tenure as counsel to the President, there have never been any audio recordings or transcriptions of any meetings in the White House Counsel offices concerning these topics, or any others, so far as the White House is aware.

Judge Gonzales and the White House have undertaken appropriate efforts to accommodate the Senate by providing relevant information. Between his written answers and his testimony, Judge Gonzales has addressed his role in the solicitation and provision of legal advice, as well as his personal views on the contested issues—such as

the treatment of detainees. There is an ample record to evaluate his nomination. I urge Senators to review the voluminous materials that have been produced before coming to any conclusion.

Mr. President, another argument used by the Gonzales critics is that he refused to answer certain hypothetical questions during his hearing. Using the rejected language of the Bybee memo about a postulated Commander-in-Chief override of the torture statute, certain Judiciary Committee members repeatedly asked Judge Gonzales whether he believed the President could authorize torture in extreme and hypothetical circumstances. Judge Gonzales refused to engage in scenarios about when, if ever, torture might be sanctioned, because the President has rejected torture under any circumstances.

So, when the ranking minority member asked, ''Now, as Attorney General, would you believe the President has authority to exercise a Commander in Chief override and immunize acts of torture?'' Judge Gonzales answered:

[T]he President has said we are not going to engage in torture under any circumstances. And so you're asking me to answer a hypothetical that is never going to occur. This President has said we're not going to engage in torture under any circumstances, and therefore, that portion of the opinion was unnecessary and was the reason that we asked that that portion be withdrawn.

Given the administration's clear policy, this response is appropriate. Judge Gonzales has explained that the Bush administration will not engage in torture under any circumstance, so his reluctance to contradict the President's policy is perfectly understandable.

In fact, even the distinguished witnesses on the second panel of our confirmation hearing, including two law school deans and an advocate for victims of torture, were unwilling to engage in hypothetical debates about what set of circumstances—if any—might justify a presidential decision to approve torture. One witness even characterized the hypothetical about a ticking time bomb as ''fantasy'' and part of the ''mythology'' of torture. Such reticence is understandable, especially for someone, like Judge Gonzales, who serves a President who has rejected the use of torture under any circumstances.

Another of the anti-Gonzales shibboleths is that he is too close to the President to be independent. This argument ignores what Judge Gonzales, an honorable and credible man, told the Judiciary Committee. During his opening statement, and several times thereafter, Judge Gonzales acknowledged the difference between his role as White House Counsel and the job of Attorney General. At the outset of our hearing, he noted:

With the consent of the Senate, I will no longer represent only the White House; I will represent the United States of America and its people. I understand the differences between the two roles. In the former I have been privileged to advise the President and his staff. In the latter I would have a far broader responsibility: to pursue justice for all the people of our great Nation, to see that the laws are enforced in a fair and impartial manner for all Americans.

That is a clear statement that he recognizes the difference between his current job and the job of Attorney General. Judge Gonzales has been the lawyer for one person—the President—and is now going to serve as a lawyer for all Americans. Judge Gonzales knows the difference and will serve honorably as the next Attorney General.

Before I conclude, Mr. President, I want to emphasize a few of the positive comments my Democratic colleagues on the Judiciary Committee have made about this nominee. At his confirmation hearing, the senior Senator from Wisconsin told Judge Gonzales: ''As you know, we have had an opportunity to work together on several different issues over the years, and I have come to respect you also. And I believe if you are confirmed that you will do a good job as Attorney General of the United States.'' At our Executive Meeting, the senior senator from Delaware noted: ''My vote, to state the obvious, is not about his character or his compelling personal story, which is compelling. He has overcome great adversity in his life, and I believe he is an intelligent, decent and honorable man.'' The senior senator from New York said, ''I like Judge Gonzales. I respect him. I think he is a gentleman and I think he is a genuinely good man.'' Such comments do not surprise anyone who has gotten to know Judge Gonzales.

As I have noted, Judge Gonzales has taken a strong stand against torture, rejected suggestions that the President is above the law, and recognized the important distinctions between the position of White House Counsel and Attorney General. So, what is behind the votes against him? Not his personal story. Not his character. Not his willingness to work with Congress. There may well be a large overhang of politics clouding this nomination. Politics, however, is a poor reason for denying the President his choice to be Attorney General. I urge my colleagues to consider this nomination based on the facts. Regardless of what administration is in power, that is a standard we should all honor.

Mr. President, the bottom line is that Judge Gonzales is a remarkable American, well-suited for the position of Attorney General, who has been forthcoming with the Senate and the American people about his role in some very difficult decisions during a very important time. He is a good man. Even his opponents acknowledge that. I urge my colleagues to support Judge Gonzales to be Attorney General.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I will not at this point speak quite as long. Because I will not use the same amount of time now, I ask unanimous consent that the Senator from California, Mrs. FEINSTEIN, be allowed to follow my remarks.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the RECORD a number of recent editorials regarding the nomination of Alberto Gonzales.

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

[From the Los Angeles Times, Jan. 6, 2005]

A WINDOW ON A MAN'S MORALITY; ALBERTO R. GONZALES' RECORD RAISES QUESTIONS ABOUT HIS FITNESS TO SERVE AS ATTORNEY GENERAL

The Republicans' comfortable majority in the Senate means that Alberto R. Gonzales will almost certainly be confirmed as the next attorney general. With hearings on his nomination set to start today, many Democrats think the best they can do is wound Gonzales enough with questions about his notorious torture memos to disqualify him for any future Supreme Court seat. In the end, however, they will feel pressure to support him or face retaliation from Republicans.

They should resist.

The eight Democrats and a smattering of moderate Republicans who voted for John Ashcroft four years ago probably felt the same pressure.

No one now can doubt the enormous power the attorney general wields or the lasting harm the person who holds that office can do. Gonzales may not share his predecessor's zeal in hounding X-rated moviemakers or cancer patients who smoke marijuana, but as the president's chief lawyer, he has been every bit as reckless.

As a leading architect of Bush's ends-justifies-means war on terror, Gonzales pushed to justify torturing terror suspects in violation of international law, promoted military tribunals that echo Stalin's show trials, helped write the Patriot Act (which, among other powers, gives government agents vast new snooping authority) and excused the limitless imprisonment of American citizens whom the president merely suspects of terror activity.

Three years into that war, much of Gonzales' handiwork has been rejected by courts, damned by the world community and disavowed by the administration—as in the Justice Department memo quietly released last week declaring that ''torture is abhorrent to both American law and values and to international norms.''

Gonzales' defenders argue that, as White House counsel, he was simply a passionate advocate for his client. But the most devoted counselor knows that, even in wartime, there are legal and moral lines this nation crosses at peril to its own citizens and those of other countries. Gonzales' justifications opened the door to the abuse at Abu Ghraib prison and the Guantanamo Bay detention facility. The mistreatment and prisoner deaths that occurred have raised fears of retaliation against captured Americans. Those concerns prompted a dozen retired generals and admirals, along with civil rights groups, to oppose Gonzales' nomination.

Our justice system relies on an attorney general willing to defend civil liberties as ardently as he pursues criminals and terrorists. That person must be someone who respects both the power and the limits of law.

Gonzales' record as White House counsel is not just a series of unfortunate missteps; rather, it is a troubling window into the man's morality and his fitness to be the nation's chief lawyer. Democratic senators will surely ask Gonzales sharp and embarrassing questions about the principles that guided his tenure in the Office of Legal Counsel. These lawmakers then ought to demonstrate that they understand the principles at stake by actually voting no.

[From the Arizona Daily Star, Jan. 8, 2005]

WRONG FOR THE JOB

George W. Bush understandably wants a trusted adviser to be his next attorney general. White House Counsel Alberto Gonzales enjoys that trust, but the President's nominee is the wrong man for the job.

With Republicans outnumbering Democrats by 55–45 in the Senate, Gonzales is likely to win approval for the position. Yet, the man who advocated the use of torture as an interrogation tool is not only unqualified, he is a threat to the rights of Americans.

Before Thursday's Senate hearing on his nomination, Gonzales was merely a legal adviser who was unqualified. But during the hearing he showed himself to be a man of questionable morality and ethics.

For example, his 2002 memo to the president stated that the war on terror ''renders obsolete Geneva's strict limitations on questions of enemy prisoners and renders quaint some of its provisions.'' The Geneva Conventions outline how prisoners of war should be treated.

But when questioned by the Senate on Thursday, Gonzales said this: ''Contrary to reports, I consider the Geneva Conventions neither obsolete nor quaint.'' He said his early interpretation applies only to organizations like al-Qaida that have no national affiliation and do not ''fight according to the laws of war.'' And he said the Geneva Conventions' protections for terrorists would ''honor and reward bad conduct.'' And he pledged to prosecute those who tortured terrorism suspects.

However, he noted that the White House is looking to change some of the Geneva Conventions' guidelines. There again, one has to question whether Gonzales is saying the right things in order to win the job.

His statements now and in the past are inconsistent at best. But more important, the legal opinion he forwarded to the president and this administration cannot be separated from the scandals of torture and death at Abu Ghraib prison in Iraq.

It is significant that among his Senate supporters, Gonzales' legal abilities and his leadership skills are hardly mentioned as top qualifications. Supportive senators instead promote the nominee's rags-to-riches story. Second among his qualifications is that he would become the nation's first Hispanic attorney general.

This administration has an affinity for those kinds of stories. But it should have learned from the Bernard Kerik nomination that they don't always make for good national leadership. Kerik withdrew his nomination as head of Homeland Security after questions arose about the immigration status of a housekeeper and nanny he employed.

Gonzales' ethnicity, his accomplishments and his role as adviser to the president for nine years are admirable but irrelevant. His background makes for great political theater but does not qualify him to be attorney general. And one would hope that Hispanics would not rush to blindly support a man who is clearly wrong for the job.

Alberto Gonzales has a history of bending the law to fit policy and the wishes of the president. Eagerness to please makes him a great adviser and confidant.

But as head of the Justice Department, the attorney general should answer only to the law.

[From the Milwaukee Journal Sentinel, Jan. 8, 2005]

EDITORIAL: DON'T CONFIRM GONZALES

Thursday's Senate confirmation hearing provided Alberto R. Gonzales with an opportunity to confront some of the nagging questions that have been raised about his nomination to be attorney general. So important is the office to which Gonzales aspires that the Senate and the American people needed to hear convincing answers to these questions. They deserved assurances that Gonzales had the judgment, the temperament and the integrity necessary for this cabinet position.

Far from supplying this reassurance, Gonzales proved to be consistently weak and evasive. So intellectually sterile was his testimony that it showed Gonzales to be unfit for the important office he seeks, and for this reason the Senate should reject his nomination.

Realistically, of course, this will almost certainly not happen; Democrats on the Judiciary Committee signaled Thursday that, despite reservations about Gonzales, they will support the nomination. Indeed, they make a respectable case, which is that presidents are entitled to broad leeway in the selection of their cabinet members. But there are limits to the discretion to which presidents are entitled; otherwise, the entire confirmation process becomes meaningless.

Unfortunately, Gonzales's views put him beyond even these broad limits. As White House counsel, he was largely responsible for, or at least acquiesced in, a repudiation of some of this country's most precious ideals, such as the notion that human beings should not be tortured.

In January 2002, Gonzales told President Bush that the war on terror ''renders obsolete'' some of the strict limitations imposed by the Geneva Conventions as applied to al-Qaida and, in some cases, Taliban fighters. Arguably, one can make that legal case but elsewhere in that letter, and more disturbing, was the tone Gonzales adopted when he dismissed as merely ''quaint'' some of the convention's human rights provisions. In August 2002, Gonzales received a Justice Department memorandum that a president could suspend Geneva Convention protections at will and that some forms of torture ''may be justified.''

On Thursday, Gonzales disavowed the use of torture. A week earlier, the Justice Department had repudiated its August 2002 memo. But why did this reversal take this long? In light of Gonzales's four-year record, his disavowal of terrorism seemed merely rhetorical and tactical. Efforts to elicit Gonzales's views were met with vagueness and equivocation. Gonzales said he couldn't remember key details of his involvement with the August 2002 memo. He wasn't even sure whether Americans could legally engage in torture under any circumstances.

Ordinarily, even these gross deficiencies might be tolerable. But these are not ordinary times. The threat to civil liberties posed by the fight on terror requires an attorney general with a demonstrated record of sound judgment, independent temperament and unquestioned integrity.

Gonzales's rags-to-riches personal story is an inspiration to all Americans. But his story is not the issue. He has not demonstrated the judgment and integrity to be the nation's chief law enforcement officer at this pivotal time in our history.

[From the Star Tribune (Minneapolis, MN), Jan. 8, 2005]

GONZALES; DEMOCRATS SHOULD REJECT HIM

Democrats in the U.S. Senate have many well-founded reasons to oppose with all their might President Bush's nomination of Alberto Gonzales to be attorney general. But one reason stands out above all others, and Democrats should pound it home: Gonzales believes the president of the United States has the power, as commander in chief, to permit the use of torture by American forces by immunizing from prosecution anyone who does it.

This reasoning was put forward in an August 2002 memo, called the Bybee memo, from the Department of Justice to the White House. Gonzales testified before the Senate Judiciary Committee Thursday that he, as the president's lawyer, simply passed the memo along. It wasn't his job, he said, to warn the president of the memo's implications or to disagree with it. Gonzales has a peculiar notion of his role as the president's attorney; others quite rightly characterize his behavior as a dereliction of duty. In fact, there's good reason to believe Gonzales was an active participant in the memo's construction.

But whatever his role, Gonzales clearly agreed with the memo, and does to this day.

Sen. Patrick Leahy, D–Vt., the ranking Democrat on the committee, tried every way he could to get Gonzales to answer ''yes'' or ''no'' to a simple question: ''Now, as attorney general, would you believe the president has the authority to exercise a commander-in-chief override and immunize acts of torture?'' Gonzales tried all kinds of tacks to avoid answering: The question is hypothetical because Bush opposes the use of torture, etc. Leahy persisted, and finally Gonzales said, ''Senator, I do believe there may come an occasion when the Congress might pass a statute that the president may view as unconstitutional,'' and therefore he can ignore it. The answer was disingenuous because the issue isn't laws Congress might pass, but established U.S. and international laws that prohibit the use of torture. Thus, the only reasonable way to interpret Gonzales' answer in the context it was asked is that, indeed, the president has the power to permit torture by immunizing those who do it.

The White House has done its darnedest to frustrate Judiciary Committee inquiries into Gonzales' role in the torture scandal. Leahy Thursday held aloft a hefty file of unanswered questions and letters he had sent to the White House seeking information on Gonzales' views about torture and his role in framing policies that led to the Abu Ghraib scandal and the abuse of prisoners at Guantanamo Bay. Despite that, Leahy and his colleagues got Gonzales on the record saying that he does believe the president has the power to override U.S. laws.

That's all the Democrats need to oppose Gonzales' confirmation en masse, and they should. Torture is always out of bounds, no matter the circumstance; it is immoral, ineffective and puts captured American forces at risk. Previous congresses and presidents have enacted laws and ratified international treaties to that effect.

The United States does not need an attorney general who believes that this president has the right to override those laws and treaties at his whim. Even if Gonzales is eventually confirmed, as it appears he will be, Senate Democrats must be on the record upholding the powerful principle that the United States unequivocally rejects torture.

[From the Slate (South Carolina), Sat. Jan. 15, 2005]

TORTURE TAINT SHOULD DISQUALIFY NOMINEE GONZALES

After last week's confirmation hearing for Alberto Gonzales, even senators who disliked the nomination said he would be confirmed, for no other reason than he is the one President Bush asked for. ''There's a lower standard, frankly, for attorney general than for judge, because you give the president who he wants,'' said Sen. Charles Schumer, D–N.Y.

There's a sad symmetry in this. Mr. Gonzales's work as legal counsel to the president on the issue of torture has been rejected by the U.S. Supreme Court and disowned by the White House—only after it backfired politically and legally. His principal qualification is unambiguous loyalty to the president. In short, his selection reflects what sadly seems to be the overriding attribute this president wants in his subordinates. That might be good enough for the president, but it does not make him the right choice to be the nation's top lawyer; in fact, in this case it should mean just the opposite.

Mr. Gonzales has helped this administration pursue the human equivalent of the hiddenball trick. Guantanamo Bay, Cuba, was chosen as the U.S. detention facility for ''enemy combatants'' under the assumption that it could be defined as a legal no-man's-land, a place where the laws of the United States do not apply. It would be years before the U.S. Supreme Court ruled, as Sen. Lindsey Graham put it, that ''Gitmo is not Mars.'' The administration took other actions, including denying legal counsel to detainees, that it thought were unlikely to withstand court scrutiny, so it endeavored instead to stall definitive rulings as long as it could.

Few of these actions can rise to the appropriately high standard delineated by Sen. Graham during the confirmation hearing: ''I do believe we have lost our way, and my challenge to you as a leader of this nation is to help us find our way without giving up our obligation and right to fight our enemy.''

But will Mr. Gonzales lead the Justice Department to meet that standard?

His answers during the confirmation hearing showed less of the firm moral base the position requires, and more of a tendency to look at things in a lawyerly way, in the Clintonian sense of the term. He said his new zeal to keep to the legal straight-and-narrow on torture stems from a new understanding that he would represent not just the president anymore, but the whole United States. But shouldn't advising the president have been enough of a guide for Mr. Gonzales to strive to uphold bedrock American principles? He treats the now-discredited legal opinions as if they have been vaporized. But they had, and are still having, real-world effects, some of them disastrous to the U.S. cause (such as Abu Ghraib). And which represents the real Alberto Gonzales: the man who appeared before the Senate or the one who advised President Bush?

This administration, and far more importantly this nation, must make a clean break from the policies identified with Mr. Gonzales. Making him attorney general of the United States accomplishes the opposite.

This nomination tells the world that no minds have been changed in this country about the use of torture; it says America sees no conflict between detaining suspects without legal counsel and trying to hold our constitutional democracy aloft as an example to the world.

Sen. Graham seems to understand that Alberto Gonzales is not the best choice. Both he and Sen. Jim DeMint have a duty, if they truly see the problems with this nomination, to vote against it, as loyal Republicans and as Americans. Only when they and others do so might this president finally see the need for change in key elements of his war strategy, and start making top personnel decisions based on that new understanding. This must happen, for the sake of the nation.

[From the Boston Globe, Jan. 18, 2005]

UNFIT AS ATTORNEY GENERAL

Two memos on the US treatment of detainees from Afghanistan and Iraq stand in the way of Alberto Gonzales becoming the next attorney general of the United States. At his confirmation hearing earlier this month, he neither disavowed the memos nor showed an understanding of how their denial of international protections to detainess could lead to the many cases of prisoner abuse reported by both the FBI and the International Red Cross. The Senate should reject his nomination.

In his testimony, Gonzales made frequent reference to the much-photographed instances of prisoner humiliation and abuse at Abu Ghraib, as though the naked-body pyramid and other abuses that Specialist Charles Graner was justifiably convicted of Friday were the worst of what has occurred. But the FBI and Red Cross reports as well as the military's own investigations of killings of prisoners make clear that some interrogators and guards crossed the line into torture or homicide. It is disingenuous of Gonzales not to acknowledge the link between permissive torture policies from Washington and acts of abuse that occurred not just at Abu Ghraib but in Afghanistan and Guantanamo as well.

In 2002 as White House counsel, Gonzales wrote a memo in which he called provisions of the Geneva Conventions regarding prisoners of war ''obsolete'' and ''quaint'' and said the United States could operate as though the conventions did not apply to the Afghan war. Indeed, some of the fighters captured during the 2001 war against the Taliban and Al Qaeda in Afghanistan might not have deserved the status of POWs.

But the Geneva Conventions—and American law—make clear that any battlefield detainee has that status until a ''competent tribunal'' puts him in the less protected category of ''enemy combatant.'' As US Judge James Robertson noted in a ruling last November, the Geneva Conventions do not give any individual, including the president, the authority to say who deserves POW status. The White House counsel certainly lacks that authority.

The second memo that has damaged the US reputation worldwide was written in 2002 by a Justice Department official as a guide to interrogation techniques. The memo, which Gonzales discussed with administration officials, said a president has the power to authorize torture despite a 1994 US law banning it. At the confirmation hearing, Gonzales declined chances to repudiate that view.

The Sept. 11, 2001, attacks thrust the United States into a new kind of conflict in which useful intelligence from detainees is crucial. But Gonzales has been at the center of administration policy-making that set aside tried and true US and international rules governing the collection of this information. His blindness to the consequences of those policies makes him a poor choice for chief law enforcement officer of the nation.

[From the Republican (Western Massachusetts), Jan. 23, 2005]

GONZALES NOMINATION LEAVES MANY QUESTIONS

When Alberto Gonzales appeared before the Senate Judiciary Committee earlier this month, some of his answers to questions about the treatment of prisoners in Iraq, Afghanistan and elsewhere left some Democratic committee members wanting more. So they asked a series of follow-up questions to be answered in writing. And when Gonzales provided his answers, those same senators still found themselves wanting more.

So they decided to delay—for at least one week—a committee vote on his nomination to succeed John Ashcroft as attorney general. It was the right move.

There are real questions about Gonzales's fitness to serve as attorney general. His nomination should not move forward until those questions are answered.

He has written that certain provisions of the Geneva Conventions—which provide for the treatment of enemy prisoners—are ''quaint'' or ''obsolete.'' Gonzales approved a memorandum saying that the president ''wasn't bound by laws prohibiting torture and that government agents who might torture prisoners at his direction couldn't be prosecuted by the Justice Department.''

Gonzales has said he believes that the president of the United States has the authority to order the detention of enemy combatants indefinitely during wartime. He has repeatedly backed the provisions in the USA Patriot Act that infringe most broadly on civil liberties and the fundamental right of the citizens to be left alone.

When he was attorney general of Texas—while George W. Bush was governor—he wrote a memo directly contradicting a federal law that grants foreign nationals access to American courts when they are accused of a crime.

And the list goes on and on.

The president has nominated Alberto Gonzales to be the chief law enforcement officer in the United States. The attorney general sits at the very top of the U.S. Department of Justice. The person in that position must possess a scrupulousness that is beyond question.

Gonzales has not, to date, demonstrated that he has the qualities that an individual needs to be elevated to one of the most significant positions in this nation.

[From the New York Times, Jan. 26, 2005]

THE WRONG ATTORNEY GENERAL

Alberto Gonzales's nomination as attorney general goes before the Senate at a time when the Republican majority is eager to provide newly elected President Bush with the cabinet of his choice, and the Democrats are leery of exposing their weakened status by taking fruitless stands against the inevitable. None of that is an excuse for giving Mr. Gonzales a pass. The attorney general does not merely head up the Justice Department. He is responsible for ensuring that America is a nation in which justice prevails. Mr. Gonzales's record makes him unqualified to take on this role or to represent the American justice system to the rest of the world. The Senate should reject his nomination.

The biggest strike against Mr. Gonzales is the now repudiated memo that gave a disturbingly narrow definition of torture, limiting it to physical abuse that produced pain of the kind associated with organ failure or death. Mr. Gonzales's attempts to distance himself from the memo have been unconvincing, especially since it turns out he was the one who requested that it be written. Earlier the same year, Mr. Gonzales himself sent President Bush a letter telling him that the war on terror made the Geneva Conventions' strict limitations on the questioning of enemy prisoners ''obsolete.''

These actions created the legal climate that made possible the horrific mistreatment of Iraqi prisoners being held in Abu

Ghraib prison. The Bush administration often talks about its desire to mend fences with the rest of the world, particularly the Muslim world. Making Mr. Gonzales the nation's chief law enforcement officer would set this effort back substantially.

Other parts of Mr. Gonzales's record are also troubling. As counsel to George Bush when he was governor of Texas, Mr. Gonzales did a shockingly poor job of laying out the legal issues raised by the clemency petitions from prisoners on death row. And questions have been raised about Mr. Gonzales's account of how he got his boss out of jury duty in 1996, which allowed Mr. Bush to avoid stating publicly that he had been convicted of drunken driving.

Senate Democrats, who are trying to define their role after the setbacks of the 2004 election, should stand on principle and hold out for a more suitable attorney general. Republicans also have reason to oppose this nomination. At the confirmation hearings, Senator LINDSEY GRAHAM, Republican of South Carolina, warned that the administration's flawed legal policies and mistreatment of detainees had hurt the country's standing and ''dramatically undermined'' the war on terror. Given the stakes in that war, senators of both parties should want an attorney general who does not come with this nominee's substantial shortcomings.

[From the Washington Post, Jan. 26, 2005]

A DEGRADING POLICY

Alberto R. Gonzales was vague, unresponsive and misleading in his testimony to the Senate Judiciary Committee about the Bush administration's detention of foreign prisoners. In his written answers to questions from the committee, prepared in anticipation of today's vote on his nomination as attorney general, Mr. Gonzales was clearer—disturbingly so, as it turns out. According to President Bush's closest legal adviser, this administration continues to assert its right to indefinitely hold foreigners in secret locations without any legal process; to deny them access to the International Red Cross; to transport them to countries where torture is practiced; and to subject them to treatment that is ''cruel, inhumane or degrading,'' even though such abuse is banned by an international treaty that the United States has ratified. In effect, Mr. Gonzales has confirmed that the Bush administration is violating human rights as a matter of policy.

Mr. Gonzales stated at his hearing that he and Mr. Bush oppose ''torture and abuse.'' But his written testimony to the committee makes clear that ''abuse'' is, in fact, permissible—provided that it is practiced by the Central Intelligence Agency on foreigners held outside the United States. The Convention Against Torture, which the United States ratified in 1994, prohibits not only torture but ''cruel, inhumane or degrading treatment.'' The Senate defined such treatment as abuse that would violate the Fifth, Eighth or 14th amendments to the Constitution—a standard that the Bush administration formally accepted in 2003.

But Mr. Gonzales revealed that during his tenure as White House counsel, the administration twisted this straightforward standard to make it possible for the CIA to subject detainees to such practices as sensory deprivation, mock execution and simulated drowning. The constitutional amendments, he told the committee, technically do not apply to foreigners held abroad; therefore, in the administration's view the torture treaty does not bind intelligence interrogators operating on foreign soil. ''The Department of Justice has concluded,'' he wrote, that ''there is no legal prohibition under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas.''

According to most legal experts, this is a gross distortion of the law. The Senate cited the constitutional amendments in ratifying the treaty precisely to set a clear standard that could be applied to foreigners. Nevertheless, Mr. Gonzales uses this false loophole to justify practices that contravene fundamental American standards. He was asked if there were any legal prohibition against U.S. personnel using simulated drowning and mock executions as well as sleep deprivation, dogs to inspire fear, hooding, forced nudity, the forced injection of mood-altering drugs and the threat of sending a detainee to another country for torture, among other abuses. He answered: ''Some might. . . be permissible in certain circumstances. ''

This is not a theoretical matter. The CIA today is holding an undetermined number of prisoners, believed to be in the dozens, in secret facilities in foreign countries. It has provided no account of them or their treatment to any outside body, and it has allowed no visits by the Red Cross. According to numerous media reports, it has subjected the prisoners to many of the abuses Mr. Gonzales said ''might be permissible.'' It has practiced such mistreatment in Iraq, even though detainees there are covered by the Geneva Conventions; according to official investigations by the Pentagon, CIA treatment of prisoners there and in Afghanistan contributed to the adoption of illegal methods by military interrogators.

In an attempt to close the loophole, Sen. RICHARD J. DURBIN (D-Ill.), Sen. JOHN MCCAIN (R-Ariz.) and Sen. JOSEPH I. LIEBERMAN (D-Conn.) sought to attach an amendment to the intelligence reform legislation last fall specifying that ''no prisoner shall be subject to torture or cruel, inhumane or degrading treatment or punishment that is prohibited by the Constitution, laws or treaties of the United States.'' The Senate adopted the provision unanimously. Later, however, it was stripped from the bill at the request of the White House. In his written testimony, Mr. Gonzales affirmed that the provision would have ''provided legal protections to foreign prisoners to which they are not now entitled.'' Senators who supported the amendment consequently face a critical question: If they vote to confirm Mr. Gonzales as the government's chief legal authority, will they not be endorsing the systematic use of ''cruel, inhumane and degrading'' practices by the United States?

Mr. LEAHY. Mr. President, today we are beginning the debate on the nomination of Alberto Gonzales to be Attorney General of the United States.

When I first heard of this nomination last November, I was hopeful. I saw this nomination as a chance for some long missing accountability on some of the most pressing issues facing our Nation. I noted at the time that I like and respect Judge Gonzales. I met with him soon after his designation and wrote to him, following up on that meeting, to inform him in advance of his confirmation hearing about issues that would be raised about several key issues. I listened carefully to him during our confirmation hearing.

The road he has traveled from being a 12-year-old boy selling soft drinks at football games, all the way to the State House in Texas and to the White House, is a tribute to him and to his family. In spite of our disagreements on issues, I have sought to maintain a cordial personal working relationship with Judge Gonzales during his years as President Bush's counsel. As Senator KENNEDY has said, I dearly wish that we could vote for that compelling story, and not for the nominee whose record is before us. In my case, I will vote based on the record.

It saddened me to call Judge Gonzales last week and tell him that I could not in good conscience vote to confirm his nomination to be Attorney General, the chief law enforcement officer of the Nation. He is not the person for this job.

My reasons for voting against Judge Gonzales arise from the need for accountability and derive from the nominee's involvement in the formulation of a number of policies that have tarnished our country's moral leadership in the world and put American soldiers and American citizens at greater risk.

When President Bush announced this nomination he said that he chose Judge Gonzales because of his ''sound judgment'' and role in shaping the Administration's policies in the war on terrorism. Based on the glimpses of secret policy formulations and legal rationales that have come to light, I believe his judgments not to have been sound. On the contrary, several of this Administration's legal policies have been exceedingly harmful to our national interests.

As Attorney General, the nominee's judgment about our laws would be of enormous consequence.

This is a different type of Cabinet position than many others. In many Cabinet positions, such as the Secretary of State, the Secretary of Treasury, and others, the Cabinet member states the President's position. They state the President's position and carry out the President's policies. The Attorney General is different. The Attorney General is not the Attorney General of the President; he is the Attorney General of the United States. This is a position where the cabinet member has enormous flexibility to carry out decisions—to bring prosecution or withhold it, to begin an investigation or to withhold an investigation, to determine to go into a place where he believes there may have been a voting rights violation or to say there is none. This individual must be independent of the President.

Judge Gonzales has championed policies that are in fundamental conflict with decades of laws, sound military practice, international law, and human rights. He remained silent for almost 2 years about a deeply flawed and legalistic interpretation of our Nation's torture statute. He also accepted a patently erroneous interpretation of the torture convention and apparently believes that the President, when acting as Commander in Chief, is above the law.

When I asked Judge Gonzales if he agreed with the Bybee memo's very narrow reading of the law, he replied: ''I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement

with the conclusions then reached by the Department.'' This is the memo which concludes that ''physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.'' Even the Justice Department repudiated this legal memorandum, once it became public.

Under his restrictive redefinition such practices as threatening a prisoner with a firearm in a mock execution, ''waterboarding'' a person to make him experience the suffocating effects of drowning, and, as Senator KENNEDY noted, perhaps even cutting off a person's fingers one joint at a time would not amount to ''torture.'' But surely we consider these practices torture when done to a member of the U.S. military or to an American citizen.

How can we, the greatest Nation on Earth, stand up and say such acts are not torture if committed against foreign detainees?

Perhaps most disturbing of all as a legal matter is the nominee's positing of the President as above the law. Nothing is more fundamental about our constitutional democracy than our basic notion that no one is above the law. Yet at his June 2004 news conference and again in his testimony before the Judiciary Committee he indicated that he views the President to have the power to override our law and, apparently, to immunize others to perform what would otherwise be unlawful acts. This is about as extreme a view of executive power as I have ever heard. I believe it is not only dead wrong as a constitutional matter but extremely dangerous. The rule of law applies to the President, even this President.

From the time of George Washington to George W. Bush, we have always maintained that in our Nation no one is above the law—not the President, not a Senator, not a judge, not anyone in our country.

Ironically, it was the administration of this President's father that urged the Senate to ratify the torture convention. It did so to make clear that the United States condemns torture and to protect Americans from this barbaric practice. But if the U.S. President does not feel bound by the torture convention, then neither will other foreign leaders.

Ultimately, the Attorney General's duty is to uphold the Constitution and the rule of law—not to work to circumvent it. Both the President and the nation are best served by an Attorney General who gives sound legal advice and takes responsible action, without regard to political considerations—not one who develops legalistic loopholes to serve the ends of a particular administration.

The Attorney General appointed by the President's father remarked: ''Nothing would be so destructive to the rule of law as to permit purely political considerations to overrun sound legal judgment.'' Judge Gonzales demonstrates a lack of independence from the President, something that we cannot have in the chief law enforcement officer in the nation. He cannot interpret our laws to mean whatever the President wants them to mean. To do so would deny us the constitutional protections upon which this nation was founded. The Attorney General is supposed to represent all of the American people, not just one of them.

We have seen what happens when the rule of law plays second fiddle to the President's political agenda. This Administration has taken one untenable legal position after another regarding the rule of law in the war against terror. It will not admit to making mistakes. It takes action only after mistakes are made public and become politically indefensible.

Given the Republican Party's leadership in Congress, the Federal courts have provided what little check there has been on this President's claim of unfettered Executive power. The Congress has failed to do any real oversight of that use of power.

Judge Gonzales's nomination initially seemed like a breath of fresh air. I have noted how much I personally like him. I think most people do. But as I told the nominee when we met within days of the announcement of his nomination, these confirmation proceedings matter. The proceedings matter because it is the responsibility of this Senate to explore Judge Gonzales's judgment and actions in connection with the tragic legal and policy changes formulated in secret by this administration and still cloaked from congressional oversight and public scrutiny. Part of it is the fault of the Congress which has not conducted vigorous oversight, but a large part of this problem is due to an administration that has not answered the questions asked by both Republicans and Democrats.

America's troops and citizens are at greater risk because of those actions and their terrible repercussions throughout so much of the world. America's moral standing and leadership have been undercut. The searing photographs of Abu Ghraib have made it harder to create and maintain the alliances we need to prevail against the vicious terrorists who threaten us, including those who struck America 9 months into this President's first term.

Those abuses at Abu Ghraib have served as recruiting posters for the terrorists. That is why this process matters. The confirmation process shows that on the question of judgment, Judge Gonzales is the wrong man for this job.

After his recent inaugural address, I praised President Bush for the eloquent words he said about the United States' historic support for freedom. But to be true to that vision, we need a government that leads the way in upholding human rights, not one that secretly develops legalistic rationalizations for circumventing human rights.

To reclaim our moral leadership in the world, and to become a true messenger of hope instead of a source of resentment, we need to acknowledge wrongdoing and show accountability for mistakes that have been made.

We have seen departures from our country's honorable traditions, practices, and established law in the use of torture, originating at the top ranks of authority and emerging at the bottom. At the bottom of the chain of command, we have seen a few courts martial. But at the top, we have seen medal ceremonies, pats on the backs, and promotions.

Between these two dissonant images, there is a growing accountability gap. The administration's handling of this confirmation process, which could have helped to narrow the gap, has served to widen it.

I believe in redemption in public life, as in spiritual life, but to get to redemption, first there has to be accountability. This administration has a large and growing accountability deficit. Judge Gonzales, who could have become a part of the solution, remains a part of the problem.

Now more than ever we need an Attorney General to serve all Americans. There is much that has gone wrong that this administration has stubbornly refused to admit or correct. For this democratic Republic to work, we need greater openness and accountability. It is with those critical considerations in mind that I must vote against this nomination.

I believe under the earlier order, the Senator from California is now going to be recognized.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

Mr. HATCH. Mr. President, reserving the right to object, and I will not object.

The PRESIDING OFFICER. The unanimous consent has already been agreed to.

Mr. HATCH. I understand. I ask unanimous consent that I immediately follow the Senator from California.

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

Mr. LEAHY. Then, Mr. President, I ask unanimous consent that following Senator HATCH, Senator SCHUMER be recognized.

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

Mr. LEAHY. Mr. President, I understand we are coming back at 2:15 p.m. after the caucuses?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. I ask unanimous consent that we lock in 10 minutes at 2:15 p.m. for the Senator from Maryland, Ms. MIKULSKI.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. That will be agreeable.

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

Mr. LEAHY. I thank the distinguished senior Senator from Pennsylvania, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member.

I rise today to explain why I deeply regret I cannot vote to confirm Alberto Gonzales to be the next Attorney General.

I believe as a general rule the President is entitled to the Cabinet of his choice. But one Department, the Department of Justice, always deserves special attention from Congress because it does not exist solely to extend the President's policies.

Though the Attorney General serves under the President, he must independently interpret the laws as written by Congress and be truly the country's chief law enforcement officer.

I cannot emphasize this enough. The Department of Justice must be independent from the White House. The FBI must be independent. The U.S. attorneys must be independent. The Criminal Law Division, the Environmental Law Division, the Civil Law Division must all be independent. The Solicitor General's Office, which argues before the Supreme Court, must be independent. The Office of Legal Counsel, which is charged with interpreting the law of the executive branch, must be independent. The Civil Rights Division must be independent.

These departments are charged with nothing less than following, interpreting, and implementing the law of the United States of America. The Department of Justice is in charge of defending the Nation in court. It is in charge of advising the rest of the Government about what the law means. It is in charge of overseeing the investigations of the FBI, and it is in charge of deciding when to prosecute criminals and send them to prison. This is obviously a big portfolio.

The head of the Department of Justice is the chief law enforcement officer of the United States. As such, the Attorney General is in charge of 59 separate divisions within the Department of Justice, which cover more than 110,000 employees. In my view, before we vote to confirm to put someone in charge of all this awesome power—and it truly is awesome—it is important for us to know what that individual thinks about the major policies the Department will be implementing. And that is where I have been disappointed by the confirmation process for Judge Gonzales.

When President Bush nominated Judge Gonzales, I think many of us were prepared to give him the benefit of the doubt. But the hearings crystallized how little we knew about his own policy views, how little we knew about his qualities for leadership, his policy views, his management style, his strength of character, and his personal beliefs in those areas where he sets the tone and the policy. I think this was a great missed opportunity.

John Ashcroft served 6 years in the Senate. We knew his service on the Judiciary Committee. We knew about his views. One could decide about his personal views, yes or no. Judge Gonzales has spent so many years serving President George Bush. If confirmed, this will be the fifth job George Bush appointed Judge Gonzales to over the past decade. The hearings were his first real opportunity to show his own views. I think this is why the hearing process became so important in many of our views.

This was a crucial opportunity for Judge Gonzales. Many of us were prepared to vote for him. If there is a single issue that defines this confirmation process, it is what Judge Gonzales thinks about torture and brutal interrogation practices.

He reminded us again and again that both he and the President condemn torture. But as we know from the Bybee memo of August 2002, for at least 2 years, the Federal Government followed a definition of torture that was excessively narrow. In fact, it was considered so incorrect that the Department of Justice revoked it on the eve of Judge Gonzales' hearing.

That memo defined torture as:

> Equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

For me, in addition to its clear legal and moral importance, the issue of torture became the main way for assessing this next Attorney General. And it was very important for him to state in unambiguous terms what he thought. It was as important a way for us to assess how he approaches a problem as any.

In his opening statement, Judge Gonzales offered a clear, absolute condemnation of torture. He said flatly:

> Torture and abuse will not be tolerated by this administration.

At this point, at the beginning of his testimony, there were no ifs, ands, or buts. But after that, his testimony, both verbal and in writing, was full of ambiguities. It seemed intended not to make his views clear, but to shield his views, and it seemed to narrow the definition of what counts as torture.

For instance, at the hearing, at one point, Judge Gonzales told Senator LEAHY, our ranking member, ''I reject that opinion,'' referring to the Bybee opinion. But at another point in the hearing, he told the same Senator, Senator LEAHY:

> I don't have a disagreement with the conclusions then reached by the department.

Those statements are clearly in conflict, and leave me with no idea what he thinks about the Bybee memo.

I also note that Judge Gonzales clearly did not do everything he might have done to try to answer the questions put to him.

In his written testimony, especially to Senator KENNEDY, Judge Gonzales refused to provide the answers or the documents requested. He even refused to conduct a search that would have refreshed his memory.

Let me quote the multiple times Judge Gonzales refused to answer Senator KENNEDY's questions, and these are all quotes:

> I do not know what notes, memoranda, e-mails or other documents others may have about these meetings, nor have I conducted a search.

Point 2:

> I have no such notes, and I have no present knowledge of such notes, memoranda, e-mail, or other documents and I have not conducted a search.

Point 3:

> I have no present knowledge of any non-public documents that meet that description. However, I have conducted no search.

Point 4:

> I have no present knowledge that there are any documents of the sort requested in the question, although I have not conducted an independent search for such documents.

Point 5:

> I have no present knowledge of any such documents or materials, although I have not conducted a search.

Point 6:

> I have no present knowledge of any such records, although I have not conducted a search.

The last formulation he repeated in two additional instances.

These are not adequate answers to satisfy the nomination process for the confirmation of a person to be the next Attorney General, nor do they bode well for the Judiciary Committee's and this Congress's oversight responsibilities for the Department of Justice.

Judge Gonzales also refused to provide many documents that we requested. In specific, I asked him to provide me with a copy of the final version of his January 2002 memo to the President. That is very important because earlier memos that he had written were different. It was important, if this was his final opinion, that we have an opportunity to look at it, because that opinion was definitive and dispositive.

The January memo is a well known one, where he wrote that the war on terror ''renders obsolete Geneva's strict limitations on questioning of enemy prisoners.'' If that was only a draft, as he said, as he had emphasized, then I believe it is imperative for us to see the final version, and he refused me that opportunity. He wouldn't provide the memo, saying the White House had declined to allow it.

To tell you the truth, because of the prior history, that simply is not good enough for me.

Also of importance in the questions that he did answer, he seemed to continually narrow, again, the definition of torture. I saw this as a retreat from his original condemnation of torture and abuse and I thought it showed that he was trying more to defend the President's policies than to demonstrate his own views.

That, in my view, is the nub of the problem. Here he was no longer the President's man, he was going to be the

chief law enforcement officer, independent, head of 110,000 people, with all kinds of major departmental responsibilities—environmental law, civil rights law, the Solicitor General, as I stated earlier in my remarks. I saw this narrowing as a retreat from his original condemnation of torture and abuse, and I thought it showed that he was trying, again, more to defend the President than to talk for himself. Let me give an example.

At the hearing he told Senator DURBIN that even under the laws implementing the Convention Against Torture:

aliens interrogated by the United States outside the United States enjoy no substantive rights under the 5th, 8th, and 14th Amendments.

If this is Judge Gonzales's view, it is a significant gap in the prohibition against abuse.

I gave him the opportunity to clarify this issue. In written testimony he confirmed the thrust of the answer, stating to me:

There is no legal prohibition under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas.

In another written question, I asked Judge Gonzales to specify his own views again on specific harsh interrogation methods. I wrote to him:

Putting aside legal interpretations, in your own personal opinion, should the United States use forced nudity, the threatening of detainees with dogs, or ''water-boarding'' when interrogating detainees?

That was my question in writing. He began his answer by stating:

I feel that the United States should avoid the use of such harsh methods of questioning if possible.

I was asking for a statement by the man. ''If possible'' is a major loophole, and I truthfully don't know what it means. I don't know how big that loophole is intended to be.

As I was reviewing the correspondence, I was struck, in particular, by a letter that the committee received from a group of 12 esteemed former military leaders—generals, admirals, even a former chairman of the Joint Chiefs of Staff.

This letter was signed by Brigadier General David M. Brahms, Retired, U.S. Marine Corps; Brigadier General James Cullen, Retired, U.S. Army; Brigadier General Evelyn P. Foote, Retired, U.S. Army; Lieutenant General Robert Gard, Retired, U.S. Army; Vice Admiral Lee F. Gunn, Retired, U.S. Navy; Rear Admiral, Retired, U.S. Navy; General Joseph Hoar, Retired, U.S. Marine Corps; Rear Admiral John D. Hutson, Retired, U.S. Navy; Lieutenant Claudia Kennedy, Retired, U.S. Army; General Merrill McPeak, Retired, U.S. Air Force; Major General Melvyn Montano, Retired, U.S. Air Force National Guard; and General John Shalikashvili, former Chairman of the Joint Chiefs of Staff.

Let me paraphrase the letter. They write as retired military professionals in the U.S. Armed Forces to express their deep concern about the nomination of Alberto Gonzales and they urge us in the hearing to detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice. They go on to say:

Mr. Gonzales appears to have played a significant role in shaping U.S. detention operations. . . . It is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops around the world.

They then talk about the memo Judge Gonzales wrote to the President on January 25, 2002, advising him the Geneva Conventions don't apply to the conflict then underway in Afghanistan. They say more broadly that he wrote the war on terrorism presents a new paradigm that renders obsolete the Geneva protections.

Then they go on to say, and I think this is important:

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would ''reverse over a century of U.S. policy and practice in supporting the Geneva Conventions,'' and would ''undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general.''

That is a huge problem out there because at best, these hearings and the written questions and answers which are voluminous are really unable to clarify any of the positions of Alberto Gonzales, the man, Alberto Gonzales, head of one of the largest and most powerful agencies of the American Government, the U.S. Department of Justice.

We look at the Department of Justice one way, but most Americans look at it as being a major citadel of power in the United States. And on occasion, we have seen that power exercised. If you are going to set the policy, if you are going to set the tone, if you are going to be the head of this Department, I want to know what you as a man, or as a woman, think, and particularly at this time.

Yes, it is clear that the problems we will face in the future are most likely to be with respect to non-state actors, and with respect to torture, which I am speaking about now. Therefore, it is extraordinarily important to know what this man thinks. If you ask me today, despite the hearings, despite 200 pages of questions and answers, I cannot really tell you. I cannot really be sure that if the White House says one thing, the head of the Department of Justice would be willing to stand up and say another. I just do not know, based on the past jobs he has had and his past performance, if he is prepared to be independent.

I have to say to this body that is important. Every one of us knows that Janet Reno was an independent Attorney General. I do not know that Alberto Gonzales will be. I don't know his management style. I don't know the vision he has for this Department. I don't know the goals he would set.

I know he is an extension of the President. I know that he can legally enable the President. I know he gives the President advice, and I think much of that advice has brought us into a terrible place where our military could well in the future be jeopardized.

I am one, frankly, who believes the Military Code of Justice has stood the U.S. military in good stead. I am one who believes the Geneva Convention—the Convention Against Torture—is the right thing. I am one who believes we should follow those, even in this non-state war.

I want to comment on one other issue, and then I will yield the floor.

I think Judge Gonzales is going to be confirmed. He is a talented lawyer and has a compelling life story. I certainly want to work with him.

I want to say one thing about some who may say this is a qualified Hispanic, and indeed he is. Nobody should think that the Hispanic community is unified on this nomination. I will put into the RECORD, if I may, letters from the Congressional Hispanic Caucus, certain editorials from newspapers, the statement of the Mexican-American Legal Defense and Education Fund, a statement of the Mexican-American Political Association, a letter from Major General Melvyn Montano, and other letters.

I ask unanimous consent to have them printed in the RECORD.

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

ALBUQUERQUE, MN,
January 25, 2005.

Hon. MEMBERS OF THE COMMITTEE ON THE JUDICIARY,
U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS: I am writing to urge that you reject the nomination of Alberto Gonzales for Attorney General. I understand that some Hispanic groups support Judge Gonzales' nomination and have urged you to confirm him. I write, as a Hispanic and as a military officer and veteran, to offer a different perspective.

I know what it feels like to be the first Hispanic named to an important leadership position in this country. I was the first Hispanic Air National Guard officer appointed as an adjutant general in the United States. I am a Vietnam veteran and served 45 years in the military, including 18 years in a command position. I welcome the prospect of more Hispanics serving in leadership positions in the government, and I respect Judge Gonzales' inspiring personal story. But I reject the notion that Hispanics should loyally support the nomination of a man who sat quietly by while administration officials discussed using torture against people in American custody, simply because he is one of our own.

I was among 12 retired Admirals and Generals, including former Chairman of the Joint Chiefs of Staff, General John Shalikashvili (Ret. USA). who wrote to you urging that you closely examine Judge Gonzales' role in setting U.S. policy on torture during his confirmation hearing.

At that hearing, Judge Gonzales did not allay concerns about his record. To the contrary, his evasiveness and memory lapses raised even more concerns. Judge Gonzales continues to maintain he can't remember how the infamous torture memo was generated. He has refused to explain the language in his own memo which implied that rejecting the applicability of the Geneva Conventions would insulate U.S. personnel from prosecution for war crimes they might ''need'' to commit. And he asserts that the Convention Against Torture's prohibition on cruel and inhuman treatment doesn't apply to aliens overseas.

In my view, these positions put our service men and women—already facing enormous danger—at even greater risk. In my capacity as Major General of the National Guard, I oversaw 4,800 National Guard personnel. When I think about how many of our troops fighting in Iraq today are drawn from the National Guard, it angers me that the danger they face has been increased as a result of the policies Judge Gonzales has endorsed. I wonder, if Judge Gonzales' children grow up to serve in the military, would he be so cavalier in dismissing the Geneva Conventions as obsolete?

Some have cynically suggested that Americans who question Judge Gonzales' record on these issues do so because they are anti-Hispanic. I reject this view. My own concerns about Judge Gonzales' fitness to serve as Attorney General grow from a deep respect for American values and the rule of law. Judge Gonzales should be evaluated on his record, not his ethnicity. On the basis of that record, I urge you to reject his nomination.

Sincerely,

MELVYN MONTANO,
Major General (Ret.),
Air National Guard.

AN OPEN LETTER TO THE SENATE JUDICIARY COMMITTEE

Hon. MEMBERS OF THE SENATE JUDICIARY,
U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR: We, the undersigned, are retired professional military leaders of the U.S. Armed Forces. We write to express our deep concern about the nomination of Alberto R. Gonzales to be Attorney General, and to urge you to explore in detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice.

During his tenure as White House Counsel, Mr. Gonzales appears to have played a significant role in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere. Today, it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world. Before Mr. Gonzales assumes the position of Attorney General, it is critical to understand whether he intends to adhere to the positions he adopted as White House Counsel, or chart a revised course more consistent with fulfilling our nation's complex security interests, and maintaining a military that operates within the rule of law.

Among his past actions that concern us most, Mr. Gonzales wrote to the President on January 25, 2002, advising him that the Geneva Conventions did not apply to the conflict then underway in Afghanistan. More broadly, he wrote that the ''war on terrorism'' presents a ''new paradigm [that] renders obsolete Geneva's'' protections.

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would ''reverse over a century of U.S. policy and practice in supporting the Geneva Conventions,'' and would ''undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general.'' State Department adviser William H. Taft IV agreed that this decision ''deprives our troops [in Afghanistan] of any claim to the protection of the Conventions in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts.'' Mr. Gonzales's recommendation also ran counter to the wisdom of former U.S. prisoners of war. As Senator John McCain has observed: ''I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.''

Mr. Gonzales's reasoning was also on the wrong side of history. Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law. During the Second World War, General Dwight D. Eisenhower explained that the allies adhered to the law of war in their treatment of prisoners because ''the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing.'' In Vietnam, U.S. policy required that the Geneva Conventions be observed for all enemy prisoners of war—both North Vietnamese regulars and Viet Cong—even though the Viet Cong denied our own prisoners of war the same protections. And in the 1991 Persian Gulf War, the United States afforded Geneva Convention protections to more than 86,000 Iraqi prisoners of war held in U.S. custody. The threats we face today—while grave and complex—no more warrant abandoning these basic principles than did the threats of enemies past.

Perhaps most troubling of all, the White House decision to depart from the Geneva Conventions in Afghanistan went hand in hand with the decision to relax the definition of torture and to alter interrogation doctrine accordingly. Mr. Gonzales's January 2002 memo itself warned that the decision not to apply Geneva Convention standards ''could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries.'' Yet Mr. Gonzales then made that very recommendation with reference to Afghanistan, a policy later extended piece by piece to Iraq. Sadly, the uncertainty Mr. Gonzales warned about came to fruition. As James R. Schlesinger's panel reviewing Defense Department detention operations concluded earlier this year, these changes in doctrine have led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

The full extent of Mr. Gonzales's role in endorsing or implementing the interrogation practices the world has now seen remains unclear. A series of memos that were prepared at his direction in 2002 recommended official authorization of harsh interrogation methods, including waterboarding, feigned suffocation, and sleep deprivation. As with the recommendations on the Geneva Conventions, these memos ignored established U.S. military policy, including doctrine prohibiting ''threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation.'' Indeed, the August 1, 2002 Justice Department memo analyzing the law on interrogation references health care administration law more than five times, but never once cites the U.S. Army Field Manual on interrogation. The Army Field Manual was the product of decades of experience—experience that had shown, among other things that such interrogation methods produce unreliable results and often impede further intelligence collection. Discounting the Manual's wisdom on this central point shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.

The United States' commitment to the Geneva Conventions—the laws of war—flows not only from field experience, but also from the moral principles on which this country was founded, and by which we all continue to be guided. We have learned first hand the value of adhering to the Geneva Conventions and practicing what we preach on the international stage. With this in mind, we urge you to ask of Mr. Gonzales the following:

(1) Do you believe the Geneva Conventions apply to all those captured by U.S. authorities in Afghanistan and Iraq?

(2) Do you support affording the International Committee of the Red Cross access to all detainees in U.S. custody?

(3) What rights under U.S. or international law do suspected members of Al Qaeda, the Taliban, or members of similar organizations have when brought into the care or custody of U.S. military, law enforcement, or intelligence forces?

(4) Do you believe that torture or other forms of cruel, inhuman and degrading treatment—such as dietary manipulation, forced nudity, prolonged solitary confinement, or threats of harm—may lawfully be used by U.S. authorities so long as the detainee is an ''unlawful combatant'' as you have defined it?

(5) Do you believe that CIA and other government intelligence agencies are bound by the same laws and restrictions that constrain the operations of the U.S. Armed Forces engaged in detention and interrogation operations abroad?

Signed,

Brigadier General David M. Brahms (Ret. USMC).
Brigadier General James Cullen (Ret. USA).
Brigadier General Evelyn P. Foote (Ret. USA).
Lieutenant General Robert Gard (Ret. USA).
Vice Admiral Lee F. Gunn (Ret. USN).
Admiral Don Guter (Ret. USN).
General Joseph Hoar (Ret. USMC).
Rear Admiral John D. Hutson (Ret. USN).
Lieutenant General Claudia Kennedy (Ret. USA).
General Merrill McPeak (Ret. USAF).
Major General Melvyn Montano (Ret. USAF Nat. Guard).
General John Shalikashvili (Ret. USA).

RESOLUTION OPPOSING THE APPOINTMENT OF ALBERTO GONZALES TO BE ATTORNEY GENERAL OF THE UNITED STATES BY THE MEXICAN AMERICAN BAR ASSOCIATION OF VENTURA COUNTY

Whereas, the Mexican American Bar Association of Ventura County was formed in 1980 and is composed of attorney members and auxiliary members who for the past 25 years have promoted access to justice for all, respect for the rule of law, equal protection and due process of law.

Whereas, under other circumstances, the Mexican American Bar Association of Ventura County would have been proud to endorse and applaud the nomination of a fellow

Mexican American attorney to the highest law enforcement position in our country; and so it is with sadness and regret, that our organization finds itself in strong opposition to the nomination of Mr. Alberto Gonzales, White House Counsel for United States Attorney General.

Whereas, Alberto Gonzales, has rendered opinions proposing that the United States of America and our sitting president George W. Bush, can disregard the Geneva Convention; to wit, Mr. Gonzales advised the President in a January 2002 memorandum that the Geneva Convention did not apply to detainees at Guantanamo Bay, Cuba. This opinion has been roundly criticized and been condemned in our country and around the world, including by members of the State and Defense Departments, as well as U.S. Military lawyers, fearing that this policy would undermine respect for U.S. Law and International law, exposing the United States' own military service members to torture and abuse.

Whereas, it is now well known that at various military detention centers at Guantanamo Bay, Cuba, in Afghanistan, in Iraq, including Abu Ghraib prison, detainees were subjected to cruel, humiliating, degrading treatment and torture, leading to the injury and even death of detainees, by U.S. Military officers and civilian contractors operating under the auspices of the United States Department of Defense.

Whereas, Mr. Gonzales authored memos that condoned the Use of Torture, by relaxing the definition of torture, describing the prohibition contained in the Geneva Convention as ''quaint'' and ''obsolete'', permitting and thereby causing our nation to be shamed and disrespected, and these ''opinions'' have contributed to the our country's loss of the good will and the respect of a significant segment of the people and countries of the world.

Whereas, Mr. Gonzales, advised the President that he was empowered to order the detention of anyone, citizen or non-citizen for indefinite periods of time, without charges being presented, without access to counsel or to an impartial tribunal, thus violating the most sacred requirements of due process of law enshrined in the U.S. Constitution. This position was later rejected by the U.S. Supreme Court in the case of Rasul vs. Bush, in July of 2004, upholding the principle that no one is beyond the reach of the law and judicial scrutiny.

Whereas, it is documented that Mr. Alberto Gonzales, as Counsel to Governor George W. Bush of Texas, also failed to provide Governor Bush with adequate information to properly review clemency requests by prisoners on death row, that might have compelled commutation of the death penalty or further judicial review, and thus failed in his duty to act as competent counsel to his client and to the People of the State of Texas.

Whereas, Mr. Alberto Gonzales by his actions and legal opinions rendered throughout his career in public positions and in his current position as White House Counsel, has violated his obligation to support the stated mission of lawyers in the United States and specifically the mission of the State Bar of Texas, his home state, which is to ''support the administration of the legal system, assure to all the equal access to justice, foster high standards of ethical conduct for lawyers, ''and educate the public about the rule of law,'' be it therefore

Resolved, That the Mexican American Bar Association of Ventura County strongly opposes the confirmation of Alberto Gonzales to the position of United States Attorney General, and furthermore, strongly urges California's Senators Diane Feinstein and Barbara Boxer, as well as all other members of the United States Senate to vote against the confirmation of Mr. Gonzales based upon his demonstrated poor judgment in legal matters and his lack of commitment to the rule of law and the Constitution of the United States of America.

MALDEF Statement on the Likely Confirmation of White House Counsel Alberto Gonzales to the Position of United States Attorney General

MALDEF, the nation's premier Latino civil rights organization, released a statement today regarding the likely confirmation of White House Counsel Alberto Gonzales to the Cabinet post of Attorney General. Below is the statement released today by Ann Marie Tallman, MALDEF President and General Counsel.

''The United States Attorney General upholds the laws that define the very democracy of our Nation. The Attorney General enforces all federal criminal and civil laws. The office holder has the responsibility to determine how to use Federal resources to prosecute violations of individual civil liberties and civil rights—such protective laws have profound impact on the daily lives of American citizens and those living in the United States. Finally, the Attorney General has the authority to appoint a special counsel to investigate and, if appropriate, prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be best served by removing the matter from the Justice Department.

MALDEF acknowledges that Judge Alberto Gonzales can fulfill his duties as Attorney General as defined by the United States Constitution, the U.S. Code and various federal Statutes. Judge Gonzales' personal history is compelling. He has overcome significant obstacles to achieve his success. His past professional experience speaks to his capabilities. MALDEF remains encouraged that President Bush would make an historic appointment of such a diligent individual.

MALDEF acknowledges Judge Gonzales' adherence to precedent in the area of individual privacy rights as defined by the constitutional right to privacy. We also recognize his perspectives on diversity and equal opportunity in higher education and employment.

MALDEF is America's premier Latino civil rights Organization, and from this unique position, we have serious questions and concerns about Judge Gonzales' record in three important areas of the law. First, Judge Gonzales' public statements and past record demonstrate support and deference to our Federal Government's Executive branch. It will be imperative for the Attorney General to question and challenge unilateral exercise of executive authority when matters of constitutional concern and violations of our federal laws demand that the Attorney General protect individual civil liberties or civil rights. In addition, there remains a concern about Judge Gonzales' unique position and transition—from Counsel to the President of the United States to the United States Attorney General—and his ability to determine when to appoint a special counsel. There is a question whether Judge Gonzales can fairly and independently determine in a matter he previously gave advice to the President as the President's attorney, if a special counsel should be appointed. A possible inherent conflict of interest based upon his on-going attorney-client duties to the President may impede his ability to be independent.

Second, due process under the law is an important Constitutional protection. Judge Gonzales's past record in the Texas Death Penalty cases and his association with memoranda setting aside the application of international war conventions as applied to enemy combatants raises concerns about whether he may set aside constitutionally guaranteed due process protections in various domestic circumstances.

Third, the federal government has sole authority and responsibility to uphold our nation's immigration policies while working to keep our homeland safe and secure. MALDEF is concerned that Judge Gonzales, as Attorney General, may delegate such important federal civil and criminal immigration authority to state and local law enforcement already overburdened with responsibilities to protect and serve at the local level without the appropriate due process protections that must remain guaranteed at the federal level.

We acknowledge that Judge Gonzales is likely to be Confirmed as the next Attorney General of the United States and the first Latino to hold this important post. MALDEF stands ready to work with Judge Gonzales as he carries out his duties and continues his public service. However, because of our specific concerns regarding apparent primacy of executive authority; a potential conflict of interest in the transition from Counsel to the President to Attorney General in enforcing the special counsel law; setting aside due process protections; and, uncertainty about whether inherent authority exists at the state and local level to enforce federal immigration policy, MALDEF cannot support his confirmation.

Congress of the United States,
Washington, DC, January 26, 2005.

Hon. Patrick J. Leahy,
Ranking Member, Senate Judiciary Committee, Dirksen Senate Building, U.S. Senate, Washington, DC.

Dear Senator Leahy, As the Senate considers the nomination of Alberto Gonzales to be the next Attorney General of the United States, we, on behalf of the Congressional Hispanic Caucus (CHC), wish to inform you that the CHC has not endorsed Mr. Gonzales.

Since its inception almost three decades ago, the CHC has served to advance the interests of the Hispanic community, which includes promoting the advancement of Latinos into high levels of public office. We have taken this responsibility seriously, and have accordingly developed a process to evaluate candidates for positions in the executive branch of the federal government. Such a process is critical to determining which candidates seek to hold office to serve the public interest rather than to promote their own personal interest. Our process has enabled us to endorse many exceptional Hispanic candidates. During the past four years, the CHC has proudly endorsed many judicial and executive branch nominees selected by President George W. Bush.

One simple step in our process is a meeting with the nominee. Upon hearing of Mr. Gonzales' nomination for Attorney General, we invited him to meet with the CHC to provide him with the opportunity to meet our Members, discuss issues important to the Latino community, and to seek our endorsement. We were informed that he wanted our support and for the past two months, we made every attempt to accommodate his schedule. However, Mr. Gonzales ultimately chose not to avail himself of the courtesies we extended to him. We were last advised that Mr. Gonzales was simply too occupied with responding to written questions from the Senate Judiciary Committee and that we would instead have to wait to until after he was confirmed as Attorney General before being granted a meeting.

Let us be clear, our concern is not about whether the CHC is granted a meeting—it is

about Mr. Gonzales' unwillingness to discuss important issues facing the Latino community. His answers to these questions would give our community the information needed to form an informed opinion of his nomination. With so little time left before a Senate vote on Mr. Gonzales' nomination, the Latino community continues to lack clear information about how the nominee, as Attorney General, would influence policies on such important topics as the Voting Rights Act, affirmative action, protections for persons with limited English proficiency, due process rights of immigrants, and the role of local police in enforcing federal immigration laws.

We are disappointed and surprised that Mr. Gonzales has refused to meet with the CHC during the confirmation process. Much has been said about the historic nature of Mr. Gonzales' nomination, as the first Hispanic to serve as U.S. Attorney General. However, the historic nature of this nomination is rendered meaningless for the Hispanic community when the nominee declines an opportunity to meet with the group of Hispanic Members of Congress who have worked for so many years to open the door of opportunity to fellow Hispanics. If he is not willing to meet with the CHC, how responsive can we expect him to be to the needs of the Hispanic community?

We provide you this information as the reason for our lack of endorsement of Mr. Gonzales.

Sincerely,

GRACE FLORES NAPOLITANO,
Chair, Congressional Hispanic Caucus.
ROBERT MENENDEZ,
Chair, CHC Nominations Task Force.
CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

Mrs. FEINSTEIN. Mr. President, in summary, I very much regret this, but I think the U.S. Department of Justice is a unique Department. I think whoever is the head of it has to stand on his own two feet, has to be totally independent of Congress, of the White House, and has to be willing to submit to rigorous oversight by the Senate, by the Judiciary Committee, and has to set a tone which enables the Department of Justice to function as a fair and independent voice of the American people, as its chief law enforcement officer.

I very much regret that I will vote no on this nomination.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Utah.

Mr. HATCH. Mr. President, I have heard the remarks of my distinguished colleagues, and I want to say I have some grave disagreements with some of the things that have been said.

I rise in support of the President's nomination of Alberto Gonzales to be the next Attorney General of the United States.

We all know who Judge Gonzales is. Today is a remarkable day in our country's history and a momentous day for the American Hispanic community.

Today, we are considering the nomination of Judge Alberto Gonzales who, when confirmed, will become the first Hispanic-American Attorney General of the United States. That is very significant. He will be eighth in line of succession to the Presidency.

In 1988, President Ronald Reagan appointed the first Hispanic Cabinet member, Secretary of Education Lauro F. Cavazos. Two years later, President George Herbert Walker Bush continued to make history by appointing the first woman and first Hispanic Surgeon General of the United States, Antonia C. Novello. Dr. Novello used to work with me as a fellow before she succeeded Dr. Koop as Surgeon General of the United States.

Just last week, the Senate confirmed President Bush's nomination of Carlos Gutierrez as Secretary of Commerce. And today, President George W. Bush sets yet another first. As Chairman of the Republican Senatorial Hispanic Task Force, I am well aware of the significance of this appointment and this moment in our Nation's history. Every Hispanic American in this country is watching how this man is being treated today and throughout this debate as we discuss the nomination. This nomination is just that important.

I know Judge Gonzales's life story. It has been laid out many times in the media and was described during the confirmation hearing. This is a story that bears repeating in the Senate. He is an American success story. He shows that no matter where anyone comes from, in America, there is no limit on how far they can go.

As many Americans know, Judge Gonzales was the second of eight children. His father and two uncles built a small two-bedroom home with no running hot water in Humble, TX, where all 10 members of this family lived, a truly humble family. His parents had no more than a few years of elementary school education, and his father was a migrant worker. Growing up in a working poor household, his family never even had a telephone.

In a story familiar to many whose parents and grandparents were immigrants, his parents knew the importance of an education for their son. After serving honorably in the U.S. Air Force, Judge Gonzales became the first person in his family to go to college. He attended the Air Force Academy and graduated from Rice University and Harvard Law School. Since then, Judge Gonzales has worked at one of the finest law firms in Texas and this country, Vincent & Elkins, he served for 3 years as the general counsel for the Governor of Texas, served as secretary of state for the State of Texas, served as a justice on the Texas Supreme Court, and became as we all know, White House Counsel for President Bush.

Yet his resume tells only part of the story. His accomplishments include many professional and civic honors. He was voted the Latino Lawyer of the Year by the Hispanic National Bar Association. He was inducted into the Hispanic Scholarship Fund Alumni Hall of Fame. He has received various awards from Harvard and Rice Universities, the United Way, the United States-Mexico Chamber of Commerce, the League of United Latin American citizens, just to name a few. He has been a pillar of every community in which he has lived.

Despite these incredible personal achievements, Judge Gonzales remains one of the most unassuming, humble, and decent individuals I have ever had the privilege of meeting, let alone work with in government. I know firsthand that he is well qualified to be Attorney General of the United States, and I commend the President of the United States on his choice of such an outstanding individual.

I am not the only person to think this. Judge Gonzales has the support of the National Council of La Raza, one of the largest Hispanic organizations in the country. He has the support of the Hispanic National Bar Association, the Latino Coalition, the League of United Latin American Citizens, the National Association of Latino Leaders, Congressional Hispanic Conference, the United States Hispanic Chamber of Commerce, the Hispanic Alliance for Progress Institute, the National Association of Latino Elected and Appointed Officials, the National Association of Hispanic Publishers, Minority Business Roundtable, the Texas Association of Mexican American Chamber of Commerce, the Congress of Racial Equality, the Jewish Institute for National Security Affairs, the Fraternal Order of Police, the National District Attorneys Association, the FBI Agents Association, the Recording Industry Association of America—just to mention a few. Anyone who says he does not have the vast majority support of all Hispanics in this country and most all other people who understand decency and honor just do not know what they are talking about.

He has garnered support from both Democrats and Republicans. The former Secretary of Housing and Urban Development, under President Clinton, Henry Cisneros, wrote an article in the Wall Street Journal in January praising Judge Gonzales, and Senator KEN SALAZAR, the newly elected Democrat from Colorado, testified in favor of Judge Gonzales in our Judiciary Committee. I commend Senator SALAZAR for sharing his opinion of the nominee.

Judge Gonzales is also supported by the former Solicitor General of the United States of America, Ted Olson, as well as members of the Heritage Foundation, the conservative institution in Washington. The philosophical, religious, and ethnic diversity of this support speaks volumes of his qualifications.

Let me take a few minutes to read from some of these letters. Janet Murguia, president and CEO of the National Council of La Raza, the largest constituency-based Hispanic organization, has given a strong recommendation of Judge Gonzales.

Not only is Judge Gonzales a compelling American success story, it is also clear that

few candidates for this post have been as well qualified. He has served as Texas' secretary of state, as a member of the Texas Supreme Court, and as White House counsel, and has been deeply involved in his community throughout his life.

We are encouraged that in response to questioning, Judge Gonzales agreed to review the Administration's positions on sentencing reform and articulated some reservations about the practice of ''deputizing'' local police to enforce immigration laws.

If confirmed, Gonzales would be the first Hispanic attorney general and the first Latino to serve in one of the four major cabinet posts—Secretary of State, Treasury, Defense, and Attorney General.

While we have had our policy differences with the Bush Administration, we are confident that Judge Gonzales is someone who will serve his country with distinction and who will also be accessible and responsive to the concerns of the Hispanic community. We urge the Senate Judiciary Committee and the U.S. Senate to confirm him as soon as possible.

She speaks for the vast majority of Hispanics in America.

Similarly, the Latino Coalition strongly supports Judge Gonzales. In a press release dated November 11, 2004, it states:

Judge Gonzales is the perfect choice for the next U.S. Attorney General. The Judge has been an instrumental part of the legal efforts to boost the war on terrorism and keep America safe and secure, while upholding the highest standards in government ethics. Judge Gonzales brings to the Office of the U.S. Attorney General a distinguished legal record based on his many years of work in the public and private sector. He also brings a unique perspective and human experience understood only by those whose families have migrated to a foreign land with little resources and not knowing the language. It is for this cultural depth and his unique legal qualifications that we urge the Senate Judiciary Committee and all members of the U.S. Senate to put partisan politics aside so that Hispanics are no longer denied representation in this important post. . . . We have been honored to work with the Judge for many years now, and have personally witnessed his ability to unite people of all different backgrounds to get things done. He is an extremely qualified and intelligent attorney who will serve with distinction and make every Latino proud. We endorse his nomination without any reservations.

He will make every Latino proud. He has up to this time everywhere he has been. He has set a good example and has done what is right in his government work.

The FBI Agents Association wrote to the committee last December:

We write to express the support of the FBI Agents Association for the nomination of Judge Alberto Gonzales for Attorney General of the United States. . . . We believe Judge Gonzales' practical life experiences, his legal training and education, his judicial expertise and his close proximity to and involvement with many of the most difficult jurisprudence issues associated with the ongoing war against terror make him a nominee fully worthy of confirmation by the U.S. Senate. We are also confident that Judge Gonzales' experience in and firm appreciation of the issues in today's national criminal justice system will serve him and the nation well as the next Attorney General.

I can guarantee the FBI Agents Association does not send recommendations like that in the case of people who are not worthy.

The National District Attorneys Association also expressed strong support for Judge Gonzales in a letter dated December 17, 2004. This is a bipartisan association of all the national district attorneys of the country:

During Judge Gonzales' tenure as Counsel to the President our leaders have had frequent opportunities to meet with him and to discuss with him issues challenging our public safety. Through these meetings we have come to recognize both his commitment to protecting the American public and to ensuring closer working relationship between federal, state and local law enforcement organizations.

With the increasingly complex challenges facing us in our fights against both organized gangs and terrorists he brings the skills and legal acumen necessary for this position of responsibility. We are confident that his confirmation will enhance the safety of our citizens from threats, domestic and international, while safeguarding those liberties that we all treasure.

As leaders for the only national organization representing the local prosecutors of this nation we have the utmost confidence in his ability to master this most challenging position and pledge to do everything within our ability to ensure that the working relationship between the Department of Justice and America's prosecutors grows even stronger.

Finally, let me read excerpts from a Wall Street Journal article written by Henry Cisneros, who was the Secretary of Housing and Urban Development in the Clinton administration and was the mayor of San Antonio for 8 years. This is what Mr. Cisneros had to say:

The last four years have posed harrowingly difficult dilemmas, especially those related to the 9/11 terrorist attack on our nation and the military and security actions that resulted from it. There have been successes and failures, there have been good judgments and misjudgments—all in the context of war, that is, a context of military organizations under stress, of imperfect information, of life-and-death concerns. The American people decided in November, for better or for worse, to see this conflict through. It would be unseemly at this juncture to use the forum of a Senate confirmation process to try to find a scapegoat for a war that is at a very difficult stage. In any event, Alberto Gonzales has done nothing to alter the basic facts that he is a seasoned legal professional, is needed by the president, and is a person of sterling character.

Mr. Cisneros goes on to say:

As an American of Latino heritage, I also want to convey the immense sense of pride that Latinos across the nation feel because of Judge Gonzales's nomination. I had the high honor of serving in a president's cabinet, as have five other American Hispanics, but we all served in what might be called ''outer circle departments.'' The historic character of this nomination is that Judge Gonzales has been nominated to one of the big four—State, Defense, Treasury, and Justice. This is a major breakthrough for Latinos, especially since it is so important to have a person who understands the framework of legal rights for all Americans as attorney general.

Judge Gonzales has demonstrated a nuanced understanding of the struggles people face as they try to build a life for their families in our country. Perhaps that appreciation comes from remembrances of his own family's struggle. In the Commencement Address at his alma mater, Rice University, earlier this year, he recalled: ''During my years in high school, I never once asked my friends over to our home. You see, even though my father poured his heart into that house, I was embarrassed that 10 of us lived in a cramped space with no hot running water or telephone.''

As an aside, I understand that. We had a humble home like that. We did not have indoor facilities at first. I knew what it was like to not be ashamed of my home but not wanting to bring people there. I understand Judge Gonzales. I was there, too.

I will continue on with Henry Cisneros's comment. Remember, he was a Cabinet member in the Clinton administration, and he strongly supports Judge Gonzales. This is what Mr. Cisneros said:

On another occasion, [Judge Gonzales] said: '' . . . my father did not have many opportunities because he had only two years of formal schooling, and so my memories are of a man who had to work six days a week to support his family. . . .He worked harder than any person I have ever known.''

That is what Judge Gonzales said.

Mr. President, this is the person who my Democratic colleagues are trying to defeat—a man who has bipartisan support throughout the country, and big-time support; a man who represents the American dream to so many of us; the man who deserves to be the next Attorney General. But to listen to these comments by our colleagues—and I think over the next couple days to listen to them—they act as if somebody has to be perfect to be a Cabinet member in any administration. But certainly in the Bush administration, they must be perfect. Not only do they say that, but you will find there are many distortions of his record. They take things out of context and blow them out of proportion.

I worked closely with Judge Gonzales during President Bush's first term, and I have found him to be a man of his word. Unfortunately, in a misguided attempt to bring this fine individual down, some people, somehow, blame Judge Gonzales for the abuses that have occurred at Abu Ghraib. As many Americans, I, too, am concerned about the alleged abuses of detainees apprehended in the war on terror. When I saw the pictures in the media of detainees at Abu Ghraib, I was simply disgusted. I think all decent Americans were disgusted. They understand the abuses that occurred there were repugnant and inconsistent with our renewed commitment to promoting liberty and democracy. There is absolutely no debate about that.

In addition, there are more allegations in the media recently about individuals being subjected to water-boarding, or suffering from cigarette burns, and other acts of physical intimidation that must be taken seriously as well. I take these allegations very seriously—very seriously. Regardless of what the precise legal definition of ''torture'' is,

when you see or hear about acts of physical abuse of prisoners, even in a time of war, it is very disturbing.

It should be obvious enough that it does not need to be said, but I condemn the torturous acts that occurred at Abu Ghraib. The President condemns torture. My colleagues on both sides of the aisle condemn torture. Make no mistake about it, Judge Gonzales condemns torture. Judge Gonzales must have said that dozens of times before and after his hearing, both orally and in writing. He opposes torture, period. He could not have been clearer on this issue. To have his record distorted is hitting below the belt.

There are many Americans who believe someone in the Government should be held responsible for these abuses. I agree. All of the individuals responsible for those atrocious acts should be punished. And they are being punished. The military immediately investigated. They have immediately prosecuted. Some of them have been sentenced, and the others will be. There is no question about it; they should be punished. However, these convictions do not get as much attention from the press as the photos themselves.

The fact is, the convictions do not provide the political ammunition for those who oppose the President and this administration.

Nonetheless, just earlier this month, Charles Graner was convicted for his role in detainee abuse. He was sentenced to 10 years of imprisonment. He also received a military demotion and was dishonorably discharged, as he should have been.

He is not the only person who has been convicted. The military has disciplined four members of a special operations unit for abusing detainees in Iraq, including at least one case of the use of a Taser stun gun. It has also subjected two individuals to administrative punishments and four others to nonjudicial punishments. The Department of Defense has completed eight investigations and has three additional ongoing investigations.

Lest we forget, the scandal of Abu Ghraib was the subject of an internal Government investigation well before the media broke the story. I am sure that as time goes on, there will be more investigations and more prosecutions of these people who acted as non-Americans, as far as I am concerned. In the global war against terrorism, American soldiers and employees must conduct themselves honorably, and we will insist they do so—and so has Judge Gonzales insisted that they do so.

Congress takes this oversight role very seriously. I was a cosponsor to S. Res. 356, which we passed last May, condemning the abuse of Iraqi prisoners at Abu Ghraib prison, urging a full and complete investigation to ensure justice is served, and expressing support for all Americans serving nobly in Iraq.

In August, the Defense Department Appropriations Act became law. It reaffirmed Congress's view that torture of prisoners of war and detainees is illegal and does not reflect the policies of the U.S. Government or the values of the people of the United States.

In December, the Consolidated Appropriations Act for Fiscal Year 2005 became law. This law includes a prohibition on the use of funds by the Justice Department to ''be used in any way to support or justify the use of torture by any official or contract employee of the United States Government.''

In addition, at least five committees have held hearings on Abu Ghraib in the 108th Congress. Since May, the Armed Services Committees of both Houses took testimony from numerous Defense Department officials. Secretary Rumsfeld himself testified four times. Other witnesses include GEN Richard Myers, Chairman of the Joint Chiefs of Staff; Acting Secretary of the Army, Les Brownlee; U.S. Army Chief of Staff, GEN Peter Schoomaker; and Central Command Deputy Commander, LTG Lance Smith.

The committees Interviewed General Taguba, the author of the Taguba Report, which investigated the photos of abuse at Abu Ghraib. They held hearings and heard testimony from general officers who conducted a formal investigation into the allegations of abuse, known as the Fay investigation and from James Schlesinger and Harold Brown, who were appointed by the Secretary of Defense to head the Independent Panel to Review DOD Detention Operations—otherwise known as the Schlesinger Report. The Senate also interviewed the Army Inspector General about his investigation, and interviewed Stephen Cambone, Undersecretary of Defense for Intelligence. The Senate Armed Services Committee took testimony from Central Command Commander General John Abizaid, Lieutenant General Ricardo Sanchez, who commanded the Multi-national Force-Iraq; Major General Geoffrey Miller, Deputy Commander for Detainee Operations in Iraq, and Colonel Marc Warren, Army Judge Advocate General.

Despite all this, there are some people who believe that not enough has been done. And I respect their views. But it seems that now, a small but vocal group of those individuals have attempted to create an almost mob mentality—looking for any high level official in the Bush administration to take the blame. And Judge Gonzales has become the favorite scapegoat for some. People who cannot even bring themselves to speak optimistically about our prospects in Iraq in the days before and now after the day of the historic election itself, surely have no qualms about creating a scapegoat out of Judge Gonzales. This man—a committed public servant, a veteran of our Armed Forces—deserves better.

Let us not lose focus here. Judge Gonzales has been nominated to be the Attorney General—not the Secretary of Defense.

And when these abuses occurred, Judge Gonzales was not the Secretary of Defense. It was not his responsibility to tell soldiers which specific interrogation tactics to use.

In fact, it was not even his responsibility to provide legal advice to the Secretary of Defense on torture or any other subject. Providing legal advice to executive branch departments and agencies is the role of the Department of Justice. His primary role was to provide legal advice to the President of the United States and other White House officials.

Now if Judge Gonzales is confirmed, it will become his responsibility to become the Nation's principal law enforcement official and help see that each American receives equal justice under the law.

But it is inappropriate and unfair to blame Judge Gonzales for legal advice given by somebody else in the Department of Justice years before he was even nominated to work in the White House.

For example, some opponents of Judge Gonzales have gone on at length about the so-called Bybee memo. Before I get into the specifics of this memo, let me bring you back to the months following September 11, 2001. All of us here remember exactly where we were when the planes crashed into the World Trade Center towers and the Pentagon and in Pennsylvania that morning. None of us will forget the feelings of vulnerability we all felt in the days, weeks and months following the attack.

President Bush has rightly made preventing another terrorist attack on U.S. soil his No. 1 priority. I know that my fellow citizens in Utah share the President's priorities when it comes to fighting terrorism. In fact, the first major international event that took place after 9/11 was held in Salt Lake City when my community hosted the winter Olympic games.

Here in the Senate, a mere month after the attack, we were terrorized by a letter sent to Senator Daschle's office containing anthrax. The distinguished ranking member of the Judiciary Committee was mistreated and threatened. Staffers, workmen, and visitors stood in line all day to be screened for anthrax, and hundreds of individuals took strong antibiotics as a preventative measure. I recall that time period where every day you would wake up wondering whether something terrible was going to happen that day.

The Bush administration, too, was facing difficult questions. We all thought that another terrorist attack could come at any moment, and it would be incredibly difficult to predict when or where such an attack would occur because our enemy acted in a clandestine manner. They dressed as civilians, not as soldiers. They did not attack our military but tens of thousands of innocent civilians, urban centers, and government buildings. These

individuals did not come from one specific country. They were a fanatic, ideological enemy with international reach. They could be anywhere. And they had the money to finance their terrorist activities.

It was during these early months that the administration explored what its options were and how they should act in confronting this unique enemy, one that fought not in uniforms on battlefields, not for a particular nation but in blue jeans and American civies.

Some are claiming that the President relied on the Bybee memo in formulating his policy with respect to interrogation techniques at Abu Ghraib. Let's take a look at these documents. First, the so-called Bybee memorandum was not written by Judge Gonzales, in spite of the implications by some. It was written by Jay Bybee who, at that time, was the Assistant Attorney General of the Office of Legal Counsel at the Department of Justice, and is now a distinguished judge on the Circuit Court of Appeals for the Ninth Circuit. That is why some people call it the Bybee memo. They could not call it the Gonzales memo. It is not the Gonzales memo, has never been the Gonzales memo.

The memo is dated August 1, 2002. Remember that date. The memo addresses the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It does not analyze the Geneva Convention. Let me just mention that this is a scholarly piece of analysis. Regardless of whether you agree or disagree with its legal conclusion, there can be little doubt that this 50-page, single-spaced document with 26 footnotes is a thoughtful and thorough analysis.

Let me also say that this memo does not tell the President to use torture in Iraq. Rather it tries to define what torture is from a purely legal perspective.

Let's compare the Bybee memo with the President's actual memorandum on the treatment of detainees. The subject of this memo is the humane treatment of al-Qaida and Taliban detainees. The President's memo was written on February 7, 2002. This is 6 months before the Bybee memorandum. So there is absolutely no way the President could have relied on the August 1, 2002, Bybee memo because it did not exist at the time he issued his definitive February 7 directive, the one that he and others followed.

Let me be clear: I am not saying the Justice Department never considered the Convention Against Torture prior to August 1, 2002. In fact, given the voluminous length of the analysis, it probably took some time to write. But to suggest this Bybee memo, which addresses a different statute, a statute that is nowhere mentioned in the President's memorandum, was indispensable in crafting the President's decision is simply false for the simple reason it did not exist at the time.

What some of my Democratic colleagues are trying to do is hold Judge Gonzales responsible for a memorandum he did not write and that came from the Justice Department which he did not direct.

The Bybee memo asks an important question: What is torture? This is a critical question to ask in the middle of a war on terror in which our enemies have made it clear that they will not observe the Geneva Conventions or any other rule of civilized conduct. Judge Gonzales received the Bybee memo, but some of my friends across the aisle are almost suggesting that he actually wrote it. He did not. He had nothing to do with it. In fact, they criticize him because they believe he did not object to the memo at the time he received it. But the fact is, we do not know what his private legal advice was to the President on the Bybee memo because that advice is privileged advice. And Presidents do not want their counsel divulging privileged advice.

In fact, we should think twice before we ever proceed down the path of attempting to require the White House Counsel to divulge to the Congress in an open hearing precisely what legal advice he gave to the President on an inherently sensitive matter such as those that directly relate to national security.

When all is said and done, Judge Gonzales did not supervise Jay Bybee. He did not supervise Attorney General Ashcroft. It was not his job as White House Counsel to approve of memos written by the Justice Department. And that memo of February 7 said the detainees should be treated humanely. That was the President's position.

I have a lot more I want to say about this, but I notice the distinguished Senator from New York is here and wanted to say a few words before we break for lunch. I will interrupt my remarks. I couldn't interrupt a few minutes earlier. I will come back to this subject.

I hope the Chair will allow the senior Senator from New York to have a few extra minutes. I would be happy to sit in the chair, if needed. But I will relinquish the floor and ask unanimous consent if I can finish my remarks after the luncheon; is that possible?

Mr. SPECTER. Mr. President, we have consent following the lunch. I think the Senator from——

Mr. HATCH. Immediately after the consent order.

Mr. SPECTER. The Senator is entitled to finish.

Mr. HATCH. Especially being interrupted and accommodating colleagues on the other side. I would like to finish.

Mr. SPECTER. There had been a request for Senator MIKULSKI for 10 minutes right after lunch.

Mr. LEAHY. Yes, at 2:15. We don't have to break at 12:30. We could continue on. I was off the floor. What was the request?

Mr. SCHUMER. Will my colleague yield for a minute?

Mr. LEAHY. I don't have the floor.

Mr. SPECTER. Mr. President, will the Senator from Utah be willing to await the completion of the remarks of Senator MIKULSKI for 10 minutes at 2:15 and Senator SCHUMER at 2:15 and then he will resume his remarks?

Mr. HATCH. Following Senator MIKULSKI?

Mr. LEAHY. If the Senator will withhold, how much longer does the Senator from Utah have?

Mr. HATCH. I have a little bit more. It could be as long as a half hour.

Mr. SPECTER. My unanimous consent request is that at 2:15, when we resume, Senator MIKULSKI be recognized for 10 minutes and Senator SCHUMER be recognized for 10 minutes and then Senator HATCH be recognized to conclude his remarks, then Senator CORNYN be recognized, and then Senator KENNEDY be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, it would be Senators SCHUMER, HATCH, CORNYN, and KENNEDY?

Mr. SPECTER. It would be Senators MIKULSKI, SCHUMER, HATCH, CORNYN, and KENNEDY.

Mr. LEAHY. I have no objection.

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

Mr. SPECTER. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will recess until 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL—CONTINUED

The PRESIDING OFFICER. Under the order of recognition, Senator MIKULSKI is recognized for 10 minutes, Senator SCHUMER for 10 minutes, followed by Senator HATCH, Senator CORNYN, and Senator KENNEDY, with no time limit agreed to for Senator HATCH, Senator CORNYN, and Senator KENNEDY.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the agreement is to have Senator MIKULSKI recognized for 10 minutes and Senator SCHUMER for 10 minutes. There is no time set when Senator HATCH resumes, and then Senator CORNYN is in line, and then Senator KENNEDY is in line. It is my hope we will be able to get a consent agreement for the full debate time early this afternoon when that appears to be appropriate.

Senator MIKULSKI, under the unanimous consent agreement, now has 10 minutes.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to exercise my constitutional responsibility pertaining to the nomination of Mr. Alberto Gonzales to be Attorney General of the United States.

Over the weekend, all of us were heartened to see the enormous turnout of the Iraqi people seeking democracy and participating in the processes of democracy, even risking life and limb to vote in an act of self-determination over the future of Iraq. I was particularly filled with joy when I saw that women were free to participate in a democratic process in Iraq. But as we look to Iraq's move toward a democratic framework, the United States of America must continue to lead the way, but also lead by example—how our own country, through its processes and the people who govern, stand up for the principles that have been the hallmark of the United States of America.

It is because of these principles of truth, justice, dignity, civil rights, human rights, and the enforcement of the rule of law that when it comes to the nomination of Judge Alberto Gonzales to be the Attorney General, I must reluctantly say that I cannot support this nomination.

When you meet Mr. Gonzales, you find him to be a warm, engaging person, a person of civility and courtesy who has an incredibly compelling personal story.

But we are not here to vote for a personal story; we are here to vote for the Attorney General of the United States, whose job is to enforce the law. Sure, we hear what a great background Mr. Gonzales has: the son of migrant workers, the first in his family to go to college and to law school, to work at a prestigious law firm, to go on to the Supreme Court of Texas, and be a Counsel to the President of the United States. But this is a man who, in his very act as Counsel to the President, created a whole new framework that created a permissive atmosphere for the United States of America to engage in torture. That is unacceptable.

Mr. Gonzales attended the U.S. Air Force Academy—wow, what a great accomplishment. If anyone would understand the risk to troops should they fall and be taken prisoners of war, why they should be held under the Geneva Convention which protects the rights of a prisoner, it should be someone who attended the U.S. Air Force Academy, which has a high rate of graduates taken POW.

Certainly the story is inspiring, but we are not voting on a personal story. The Attorney General must be committed to core constitutional values and to the rule of law. He must have a record of independence and good judgment. Mr. Gonzales has not demonstrated that commitment. In his zealous attempt to be the protector of the President, he has adopted legal reasoning at odds with core constitutional values. He has rejected long-established legal principles and compromised our Nation's moral leadership. He failed in the most important job, telling the President no, and speaking truth to power.

After a careful review of his record, I do not believe that Judge Gonzales can fulfill the principles we want at the Department of Justice.

This issue of torture is a very troubling one. Mr. Gonzales's advice to the President on this issue as well as detention and interrogation are very disturbing. Under his watch the administration changed the definition of torture, limiting it to physical pain equivalent in intensity to pain accompanying serious physical injury or even death. His advice provided the pathway to the President to exempt U.S. officials from international law governing torture.

What did that mean? It meant that if the United States of America engaged in torture, he wanted to have legal arguments to show we would not be tried as war criminals. In his 2002 memo to President Bush, he provided a legal analysis that allowed the President to sidestep international principles governing humane treatment. He said that the new form of war ''renders quaint'' the Geneva Conventions. That statement is outrageous. Quaint means outdated or old fashioned. It means it is an Edsel. Quaint is a hoola hoop. It is not a treaty. You don't call the Geneva Convention that. Though it's often not enforced as vigorously as we would want, it is the one tool that has protected our own troops. It sets guidelines for humane treatment of prisoners. If America flaunts these laws—what will happen to our soldiers if they are captured. That is why the military's judge advocate general corps and former Secretary of State Powell urged the President to stand behind the Geneva Conventions.

Since 9/11 we know that America has been fighting a different kind of war. We do know that we have to get information from terrorists who have predatory intents toward our country. We do need to look at new approaches, and maybe even reforming the Geneva Convention. But we should not do it by flouting international law.

The memorandums that Gonzales oversaw allowed a framework and an attitude for torture to take place.

Now where are we? We have troops under court-martial, and what we have is punishment at the bottom and condoning at the top.

We can't have an Attorney General like that. We need to have an Attorney General who seeks the truth, who wants to help protect the United States of America and protect the United States of America for what it stands for. This is one of the reasons I cannot support him.

But let's say 9/11 had never taken place and he had never written that memo and we had never gone to war in Iraq—wouldn't we all love it? I still would have flashing yellow lights about Mr. Gonzales. One of his main jobs is to recommend Federal judicial nominations. The way he has gone about nominations for the appellate court has been troubling. The White House Counsel's Office has pushed some of the most ideological and extreme judicial nominees we have ever seen, nominees with hostility to civil rights, to women's rights, to environmental rights, and to disability rights. This is even more troubling as we face a possible Supreme Court vacancy.

Let me talk as the Senator from Maryland. I know it firsthand. We have a vacancy on the Fourth Circuit Court of Appeals, and its Maryland's seat that is vacant. Who did Gonzales pick? First of all, he wanted a nominee who was not even a member of the Maryland bar. That was pretty sloppy or pretty ideological. Then they picked someone with minimal qualifications. There are over 30,000 lawyers in Maryland and they couldn't find somebody who was a member of the Maryland bar? Why not? They found three for the Federal district court. Instead they wanted to play politics, and the way he wanted to play politics was to take away the Fourth Circuit seat from Maryland and give it to Virginia.

We should not play politics with judicial nominations. Do we want an Attorney General who will play politics with the law, play politics with the court, and just play politics with international conventions designed to protect our troops? I do not want to play that kind of politics. I am going to vote against Alberto Gonzales.

Let me say this: The position of Attorney General is unique in American Government. As leader of the Department of Justice, the AG must have a deep respect for the Constitution. That person has to be strong and willing to do what is right, regardless of politics, of pressure, or what is popular. The Attorney General is America's most important lawyer but also the people's lawyer, to protect the American people and important institutions.

Unfortunately, Mr. Gonzales has spent the last 4 years as a single-minded advocate for Presidential policies, which he himself should have cautioned the President against undertaking. He could have advised the President and shown respect for the law. But that is not his record. If he cannot value America's constitutional principles and give independent advice to the President, I can't vote for him for Attorney General.

When we look at all the others things he has done—he skirted questions about the President's authority on torture; he didn't want to answer questions for the committee. He said he couldn't remember, then he couldn't find this and he couldn't find that—I can't find it in me to vote for him.

There are those who say the President has a right to his nominations. The President does have a right to a nomination, but that doesn't mean he has the right to get his nominee. The Founders of this country, the people

who invented America and wrote the Constitution of the United States, gave the Senate an advice and consent function. That means, to advise the President on best policies and best possible people, before we give our consent to the President.

I cannot be a rubberstamp. I have to vote my conscience and to cast my vote, reluctantly, against Alberto Gonzales.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this has been one of the most difficult votes on a nominee I have had to make since coming to the Senate, and that is because I like Judge Gonzales. I respect him. I think he is a gentleman, and I think he is genuinely a good man. We have worked well together, especially when it comes to filling the vacancies on New York's Federal bench. He has been straightforward with me, he has been open to compromise, and the bench is filled with good people.

Our interactions have not just been cordial, they have been pleasant. I have enjoyed the give and take in which we have engaged. Therefore, when President Bush nominated Judge Gonzales to be Attorney General, my first reaction was positive. Unlike with judicial nominees which are life appointments from a separate branch of Government, Cabinet officers serve the President, and I generally believe we should show deference to the President's choices. That is why I was inclined to support Judge Gonzales. I believed, and I said publicly, that Judge Gonzales was a much less polarizing figure than Senator Ashcroft had been.

But less polarizing than John Ashcroft is not enough alone to get my vote. Even if you are, as Judge Gonzales is, a good person with top-notch legal qualifications, you still must have the independence necessary to be the Nation's chief law enforcement officer. The Attorney General is unlike any other Cabinet officer. For all those other Cabinet officers, simply carrying out the President's agenda is enough. But to be a good Attorney General, unqualified deference to the President is not enough. Unlike all the other Cabinet positions, where your role is to implement and advance the President's policies as Attorney General, as the Nation's chief law enforcement officer, your job is to enforce the law, all the laws, whether they hurt or help the administration's objectives.

This position requires a greater degree of independence than, for example, the Secretary of State, whose obligation is to advance the President's interests abroad. When the White House asks the Justice Department, Can we do x? Can we wiretap this group of people? The Justice Department is charged with giving an objective answer, not one tailored to achieve the President's goals. That is the chief law enforcement officer of the land—separate from the President's right-hand person. As I have said before, it is hard to be a straight shooter if you are a blind loyalist.

There are two models for an Attorney General: loyalist and independent, and we all know there were Attorneys General over the years who have been close to the President. Robert Kennedy is a great example. He served his own brother. But that said, no one ever doubted, in the confines of the Oval Office, Bobby Kennedy would oppose his brother if he thought he was wrong. Judge Gonzales is more of a loyalist than an independent, but that alone does not disqualify him. It raises concerns, but after extensive review of the record, unfortunately and sadly, and despite my great personal affection for Judge Gonzales, his testimony before the committee turned me around and changed my vote from yes to no. He was so circumspect in his answers, so unwilling to leave even a micron of space between his views and the President's, that I now have real doubts whether he can perform the job of Attorney General.

In short, Judge Gonzales still seems to see himself as Counsel to the President, not as Attorney General, the chief law enforcement officer of the land.

I would like to give a little bit of history. Judge Gonzales came and saw me back in December. We had a good conversation on a range of topics. I respected and appreciated his commitment to recuse himself from the investigation into the felony disclosure of then-covert CIA agent Valerie Plane's identity.

I told him that I understood 9/11 created a brave new world; that the war on terror required reassessment of the rules of law; and I told him that given the enemies we now face, we couldn't afford to be doctrinaire.

I told him I supported the administration when it comes to aggressively reexamining the way we do business and interrogating witnesses.

I agree we have to make sure we are doing everything we can do to protect American families from those who would do us harm to prevent another 9/11, but I also told Judge Gonzales that I was troubled that the administration had undertaken its reworking or reinterpretation of the rules of war behind closed doors rather than engaging the Congress and the American public and the international community in an open and direct fashion.

Time and time again the administration has gotten itself into trouble by trying to go at it alone rather than doing business in the open, particularly in the Justice Department. Whether it was the total information awareness project, the TIPS Program, or torture, they have been burned by their peculiar penchant for complete secrecy.

I encouraged Judge Gonzales to be candid with the committee when discussing these issues. I encouraged him to give us some hope that he would run a different department, a more open department, one more willing to listen to the oral arguments than John Ashcroft.

Unfortunately, even a cursory review of his answers reveal strict adherence to the White House line and barely a drop of independence.

A set of answers very important to me came in response to my questions on the nuclear option—whether to rule from the chair that Senators were not allowed to filibuster judicial nominees.

When we met in private, I asked Judge Gonzales his opinion about the constitutionality of the nuclear option. He said he had not reviewed the applicable constitutional clauses, and that in any event it was a matter reserved for the Senate. I asked him at that private meeting before the hearing.

It wasn't taking him by surprise in any way to look at the Constitution. I told him I would ask the question again at the hearing. I informed him that his answer on this question would weigh heavily on my decision whether to support his confirmation.

At the hearing, when I asked Judge Gonzales about the nuclear option, rather than being candid, he completely avoided the question, ducking, dodging, and weaving.

I asked him three times to give his opinion, and each time he refused. I asked him twice more in writing, and again he refused to answer. In one of those questions, I simply asked him to imagine he was counsel to a U.S. Senator who was seeking his opinion on the constitutionality of the nuclear option, and no interference in serving the President. Again, he refused to answer.

This is a crucial issue for me for two reasons. First, the importance of the nuclear option; and second, the importance of Judge Gonzales's independence as Attorney General.

I believe the nuclear option would be so deeply destructive it would turn the U.S. Senate into a legislative wasteland and turn the Constitution inside out. Madison's ''cooling saucer'' would be shattered into shards.

Judge Gonzales in his refusal to answer such vital questions and even giving opinions so that we might see the way he thinks weighs a lot with me, at least in terms of my vote, not in terms of him as a person.

The matter repeated itself on question after question. On torture and nearly everything else, it seemed as if Judge Gonzales was going out of his way to avoid answering. He demonstrated a lack of straightforwardness and independence on just about every single question he was asked—again, no glimmer of light between how he might see things and how the President might see things.

When you are the chief law enforcement officer of the land, when you are asked to rule on sensitive questions that balance liberty and security, you can't just do what the President wants all the time or you are not serving your country or serving the job. It is different from other Cabinet positions.

I concluded that Judge Gonzales still sees himself as a White House Counsel rather than the nominee to be Attorney General, the chief law enforcement officer of the land.

I have great respect for the judge. The Horatio Alger story that he had makes all of us proud to be Americans. It makes us glad about the future of new communities as they rise in America. It is truly an amazing country when a man can rise from such humble beginnings to be nominated Attorney General.

I am mindful of the fact that if he is confirmed, as I anticipate he will be, Judge Gonzales will be the Nation's first Hispanic Attorney General. It is a tremendous success story that makes this vote even more difficult, although I am also mindful of the fact that the Hispanic Caucus voted against his nomination.

When I called Judge Gonzales last week to tell him how I would be voting, he was understandably disappointed but he was, as always, a gentleman. He assured me we would continue working together to solve our Nation's problems. He assured me he would prove me wrong, and I hope he does.

It was one of the most difficult conversations I have had in a long time. But it is too significant a job and too important a time to have an Attorney General about whom we have such severe doubts.

I have no choice but, with sadness, to vote no.

I yield the floor.

Mr. SPECTER. Mr. President, I received a letter this morning addressed to Senator COLLINS and myself, Senator LEAHY and Senator LIEBERMAN, from Senator KENNEDY and Senator DURBIN concerning the certain second report from the Department of Justice. Immediately on receiving the letter, I contacted the Department of Justice to obtain a copy of the report. This is a report that did not go to Judge Gonzales but went to another client agency by the Department of Justice advising them as to the legal parameters for interrogation techniques, and that the identity of the memoranda that previously had been disclosed to Senator LEAHY, although the memo had not been transmitted. And the matter had been briefed to the chairman of the oversight committee which has jurisdiction over the client committee. I am not very happy about all this circumlocution, but that is the information I have.

Since Senator KENNEDY was scheduled to speak in a few minutes when I got this at 2:20, I am advising my colleagues one of them is a recipient of the letter, Senator LEAHY; another is the writer of the letter, Senator KENNEDY.

I ask unanimous consent these documents be printed in the RECORD.

Mr. LEAHY. Reserving the right to object, and I shall not object, fortunately getting a letter like that is sort of like getting a big package addressed to you—and it is true, it was addressed to me—and you open the package and of course there is nothing in there and it still does not answer the question.

I will not object. I also appreciate the courtesy of the chairman making sure that everyone knew the letter had arrived.

Mr. SPECTER. As I received the letter this morning, I took steps to try to identify the memoranda and obtain it, if possible. These are the results. They ought to be made part of the record.

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

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, February 1, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen SOB, Washington, DC.

DEAR MR. CHAIRMAN: You have inquired about a memorandum from the Office of Legal Counsel, described in recent press reports as being signed by Jay Bybee, then Assistant Attorney General for the Office of Legal Counsel, and addressed to another agency, signed on or about the same date as the August 1, 2002, memorandum which has been made public, addressing the legality of specific interrogation practices under 18 U.S.C. §§ 2340 and 2340A.

As the Department of Justice made clear in a letter to Senator LEAHY dated July 1, 2004, (enclosed) ''[t]he Department of Justice has given specific advice concerning specific interrogation practices, concluding that they are lawful.'' As the Department also made clear at that time, that advice is classified and the Department will not discuss it further publicly. Thus, the existence of a classified opinion from the Department of Justice on the subject of specific interrogation practices has been publicly acknowledged for more than six months. As the Department noted in the July 1, 2004 letter, that advice has been appropriately provided by the client agency in a classified setting to the relevant oversight committee.

Finally, the Office of Legal Counsel in its recent memorandum of December 30, 2004, stated ''we have reviewed this Office's prior opinions addressing issues involving [interrogation] of detainees and do not believe that any of their conclusions would be different under the standards set forth in this memorandum.''

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

Enclosure.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 1, 2004.

Hon. PATRICK J. LEAHY,
Ranking Minority Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: This responds to your letter, dated June 15, 2004, which enclosed written questions for the record of the Committee's oversight hearing on June 8, 2004, regarding terrorism, with particular reference to the interrogation of detainees.

Questions 1 through 4: Administration documents

In response to the requests for documents contained in your first four questions, enclosed are six Department of Justice documents that have been released publicly. They are: (1) a memorandum from the Office of Legal Counsel (OLC) to the Counsel to the President and the General Counsel of the Department of Defense on the ''Application of Treaties and Laws to al Qaeda and Taliban Detainees,'' dated January 22, 2002; (2) a letter from the Attorney General to the President on the status of Taliban detainees, dated February 1, 2002; (3) a memorandum from OLC to the Counsel to the President on the ''Status of Taliban Forces Under Article 4 of the Third Geneva Convention of 1949,'' dated February 7, 2002; (4) a memorandum from OLC to the General Counsel of the Department of Defense on the ''Potential Legal Constraints Applicable to Interrogations of Persons Captured by U.S. Armed Forces in Afghanistan,'' dated February 26, 2002; (5) a letter from OLC to the Counsel to the President on the legality, under international law, of interrogation methods to be used during the war on terrorism, dated August 1, 2002; and (6) a memorandum from OLC to the Counsel to the President on ''Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A,'' dated August 1, 2002.

While these are documents that would not usually be disclosed to anyone outside the Executive Branch, the Administration decided to release a number of documents, including these and including many from the Department of Defense, to provide a fuller picture of the issues the Administration had considered and the narrower policies the Administration actually adopted in this important area. While we appreciate your interest in the additional documents set forth in the attachment to your letter, the Executive Brand has substantial confidentiality interests in those documents. OLC opinions consist of confidential legal advice, analysis, conclusions, and recommendations for the consideration of senior Administration decisionmakers. The disclosure of OLC opinions that have not been determined to be appropriate for public dissemination would harm the deliberative processes of the Executive Branch and disrupt the attorney-client relationship between OLC and Administration officials. We are not prepared to identify these documents specifically or reveal which documents may be classified, but we can assure you that no portions of any of these documents have been classified since the Attorney General's testimony on June 8, 2004.

We also can state that included in the memoranda that have been released are all unclassified, final written opinions from the Department of Justice addressing the legality of interrogation techniques used in interrogations conducted by the United States of al Qaeda and Taliban enemy combatants. While the Department has not issued written opinions addressing interrogation practices in Iraq, it has been the consistent understanding within the Executive Branch that the conflict with Iraq is covered by the Geneva Conventions, and the Department has concurred in that understanding.

Lastly, we note that some of the documents requested originated with other agencies such as the Departments of State and Defense. Consistent with established third-agency practice, we suggest that you contact those agencies directly if you wish to obtain copies of their documents.

5. Do you agree with the conclusions articulated in an August 1, 2002, memorandum from Jay Bybee, then AAG for the Office of Legal Counsel, to Alberto Gonzales, Counsel to the President, that: (A) for conduct to rise to the level of ''torture'' it must include conduct that a prudent lay person could reasonably expect would rise to the level of ''death, organ failure, or the permanent impairment of a significant bodily function,'' and (B) section 2340A, of the Federal criminal code ''must be construed as not applying to interrogations undertaken pursuant to [the President's] Commander-in-Chief authority''?

(A) In sections 2340 & 2340A of title 18, Congress defined torture as an act ''specifically intended to inflict severe physical or mental pain or suffering.'' Because Congress chose to define torture as encompassing only those acts that inflict ''severe . . . pain or suffering,'' Department of Justice lawyers who are asked to explain the scope of that prohibition must provide some guidance concerning what Congress meant by the words ''severe pain'' (emphasis added). In an effort to answer that question, the August 1, 2002 memorandum examines other places in the federal code where Congress used the same term—''severe pain.'' In at least six other provisions in the U.S. Code addressing emergency medical conditions, Congress identified ''severe pain'' as a typical symptom that would indicate to a prudent lay person a medical condition that, if not treated immediately, would result in—''(i) placing the health of the individual . . . in serious jeopardy, (ii) serious impairment to body functions, or (iii) serious dysfunction of any bodily organ or part.'' 42 U.S.C. §139w–22(d)(3)(B); see also 8 U.S.C. §1369(d) (same); 42 U.S.C. §1395x(v)(1)(K)(ii); id. §1395dd(e)(1)(A); id. §1396b(v)(3); id. §1396u–2(b)(2)(C). In light of Congress's repeated usage of the term, the memorandum concluded that, in Congress's view, ''severe pain'' was the type of pain that would be associated with such conditions. (The opinion refers to these medical consequences as a guide for what Congress meant by ''severe pain''; it does not state, as your question suggests, that, to constitute torture, conduct must be likely to cause those consequences.)

Although, in other statutory provisions, Congress repeatedly associated ''severe pain'' as a symptom with certain physical or medical consequences, it is open to doubt whether that statutory language actually provides useful guidance concerning, the prohibition in sections 2340 & 2340A. A description of medical consequences—consequences which could be accompanied by a variety of symptoms including varying degrees of pain—does not necessarily impart useful guidance to a lay person concerning the meaning of ''severe pain'' The Office of Legal Counsel is currently reviewing that memorandum with a view to issuing a new opinion to replace it and may well conclude that the meaning Congress intended when it defined torture to require ''severe pain'' is best determined from the other sources addressed in the original memorandum, including standard dictionary definitions. See, e.g., FDIC v. Meyer, 510 U.S. 471, 476 (1994) (''In the absence of [a statutory] definition, we construe a statutory term in accordance with its ordinary or natural meaning.'').

(B) The analysis in the August 1, 2002, memorandum concerning the President's authority under the Commander-in-Chief Clause, U.S. Const. art. II, sect. 2, c1. 1, was unnecessary for any specific advice provided by the Department. The Department has concluded that specific practices it has reviewed are lawful under the terms of sections 2340 & 2340A of title 18 and other applicable law without regard to any such analysis of the Commander-in-Chief Clause. The discussion is thus irrelevant to any policy adopted by the Administration. As a result, that analysis is under review by the Office of Legal Counsel and likely will not be included in a revised memorandum that will replace the August 1, 2002, memorandum. The Department believes that, as a general matter, the better course is not to speculate about difficult constitutional issues that need not be decided. For the same reason, it would be imprudent to speculate here concerning whether some extreme circumstances might exist in which a particular application of sections 2340 & 2340A would constitute an unconstitutional infringement on the President's Commander-in-Chief power. Cf Request of the Senate for an Opinion as to the Powers of the President 'In Emergency or State of War,' 39 Op. A.G. 343, 347–48 (1939).

6. Has President Bush or anyone acting under his authority issued any order, directive, instruction, finding, or other writing regarding the interrogation of individuals held in the custody of the U.S. Government or as an agent of the U.S. Government? If so, please provide copies. If any portion of any document is provided with redactions, please explain the basis for such redactions. The basis for withholding any document should also be explained in detail.

On June 22, 2004, the White House released the instruction issued by the President to the Department of Defense on February 7, 2002, concerning the treatment of al Qaeda and Taliban detainees (it does not, however, expressly address interrogation practices). The Department of Justice is not aware of any writing issued by the President that expressly addresses the issue of interrogations practices. The President has, however, made it clear that the United States does not condone or commit torture. We should also emphasize that the President has not in any way made a determination that doctrines of necessity or self-defense would point conduct that otherwise constitutes torture. The President has never given any order or directive that would immunize from prosecution anyone engaged in conduct that constitutes torture.

We assume that to the extent your question asks about directives issued by others under the President's authority it is limited to interrogations of enemy combatants in the conflict with al Qaeda and the Taliban or interrogations of persons detained in connection with the conflict in Iraq. As you know, numerous law enforcement agencies of the Executive Branch have likely acted under the President's authority as Chief Executive to issue numerous directives concerning interrogations or interviews of subjects in custody in the ordinary course of enforcing the criminal and immigration laws. We assume that such directives are outside the scope of your question.

Numerous individuals acting under the President's authority have undoubtedly issued orders or instructions regarding interrogations of individuals in U.S. custody, both in the conflict with al Qaeda and the Taliban and in the conflict in Iraq. Such documents, however, are not Department of Justice documents. Those documents should be sought from the appropriate departments or agencies that issued them, through the appropriate oversight committees in Congress.

As for the Department of Justice, the General Counsel of the FBI issued a memorandum on May 19, 2004, reiterating existing FBI policy with regard to the interrogation of prisoners, detainees or other persons under United States control. That memorandum reiterated established FBI requirement that FBI personnel ''may not obtain statements during interrogations by the use of force, threats, physical abuse, threats of such abuse, or severe physical conditions.'' It also set forth reporting requirements for known or suspected abuse or mistreatment of detainees. A copy of that memorandum is enclosed. The Department is still following up to determine whether there are any other similar written directives relevant to your question. Please also see the response to Question 8 concerning the Department's legal advice to other agencies.

7. On Friday June 11, 2004, the President was asked the following question at a press conference: ''Mr. President, the Justice Department issued an advisory opinion last year declaring that as Commander-in-Chief you have the authority to order any kind of interrogation techniques that are necessary to pursue the war on terror . . . [D]id you issue any such authorization at any time?'' The President answered: ''No, the authorization I issued . . . was that anything we did would conform to U.S. law and would be consistent with international treaty obligations.'' Please provide a copy of the authorization to which the President was referring. Please also provide a copy of the Presidential directive you had before you and referred to at the hearing.

At the press conference to which you refer, it seems likely that the President was referring to the February 7, 2002, instruction discussed above. At the hearing before the Committee, the Attorney General was also referring to the President's instruction of February 7, 2002. The Attorney General did not have any Presidential directive before him at the hearing, He was merely reading language from the February 7, document that had been incorporated into his notes.

8. Were you ever asked to approve or otherwise agree to a set of rules, procedures, or guidelines authorizing the interrogation of individuals held in the custody of the U.S. Government or an agent of the U.S. Government? If so, please indicate when you were asked to do so, and whether you did, in fact, approve or agree in any way in whole or in part. In addition, please provide a copy of any such rules, procedures or guidelines, or explain your basis for refusing to do so.

The Department of Justice has given specific advice concerning specific interrogation practices, concluding that they are lawful. The institutional interests the Executive Branch has in ensuring that agencies of the Executive Branch can receive confidential legal advice from the Department of Justice require that that specific advice not be publicly disclosed. In addition, that advice is classified. We understand that, to the extent the client department(s) have not already done so, they will arrange to provide the advice to the relevant oversight committees in a classified setting.

As noted above, included among the memoranda that the Department has already released are all unclassified, final written opinions from the Department of Justice addressing the legality of interrogation techniques used in interrogations conducted by the United States of al Qaeda and Taliban enemy combatants. While the Department has not issued written opinions addressing interrogation practices in Iraq, it has been the consistent understanding within the Executive Branch that the conflict in Iraq is covered by the Geneva Conventions, and the Department has concurred in that understanding.

9. What were the criteria the Department used in selecting civilian contractors to assist in the reconstituting of Iraq's prison system? Please describe the vetting process to which they were subjected. To what extent were concerns about their backgrounds known to the officials who recommended them to you and to what extent were you, aware of such concerns when you selected them? Why were such concerns dismissed when such individuals were recommended to you and selected by you? Please explain in detail.

It was and is essential that we do whatever we can to help create a fair and humane criminal justice system in Iraq. To that end, the Department of Justice responded to urgent requests from the Coalition Provisional Authority (''CPA'') and its predecessor for the provision of experts in the areas of prosecution, policing, and corrections. The individuals whom the Department of Justice has sent to Iraq—federal prosecutors, former state and local police officers; and corrections experts—have volunteered to take on

one of the most dangerous missions in that country. They are literally on the front lines: in the courts, in the police stations, and in the prisons.

The experts the Department provided to the CPA—including the corrections experts—have had neither responsibility for, nor control over, individuals detained by the Coalition military forces. The Department's role is strictly limited to the Iraqi criminal justice system. In particular, the corrections experts have operated heretofore under the direction of the CPA's Senior Advisor to the Iraqi Justice Ministry. Thus they have had no involvement in any of the alleged abuses at the military portions of the Abu Ghraib prison that are currently under investigation by Congress and by the United States Military.

Ensuring that these contractors are appropriately screened is a responsibility that we take very seriously. But it is important to note that we are aware of no allegation that any of the corrections contractors committed or countenanced any abuse of prisoners in Iraq. To the contrary, their central role in rebuilding the Iraqi prison system—including creating systems for reporting and correcting abuses by Iraqi prison officials—has been highly praised by the CPA's Senior Advisors to the Iraqi Justice Ministry. Nevertheless, at the Attorney General's request, the Inspector General is undertaking a review of the process used to screen and hire corrections advisors sent to Iraq.

With regard to the process for selecting the initial team of corrections experts, which deployed in May 2003, the Deparment of Justice consulted experts in the Bureau of Prisons (BOP) and the American Correctional Association. The Department contacted one of the individuals recommended by BOP, a former BOP Regional Director, and requested his assistance in further vetting proposed assessment team members. That individual agreed to join the first assessment team, and to help recommend other members. Candidates were required to submit SF 85Ps (Questionnaires for Public Trust Positions) and fingerprint cards. NCIC checks were conducted. No disqualifying information was found.

A second assessment team was deployed starting in September 2003. This team was selected based in part on BOP recommendations and in part on recommendations of members of the first assessment team. To be sure, some of the corrections experts sent to Iraq previously had been named in lawsuits in the United States, in their capacities as the directors of major state corrections systems. Although we do not minimize the significance of such lawsuits, they are commonplace for prison officials. And as far as we are aware, none of the corrections experts sent to Iraq was ever found by a court to have committed or countenanced abuses against prisoners in their custody.

As the need for corrections advisors grew, the Department worked with a government contractor firm to identify qualified candidates willing to serve in Iraq. Since January 2004, more than 80 additional correctional experts have served, or are now serving, in Iraq. These candidates were also required to submit SF85Ps and fingerprint cards. The preliminary results of our internal review indicate that a few caudidates were deployed before the necessary checks had been completed. (We would note, however, that we are aware of no allegations or findings of abuse of prisoners by these candidates in Iraq or elsewhere.) Appropriate remedial action is being taken to address this situation.

It goes without saying that these experts have taken on one of the most dangerous of tasks in Iraq. We are glad to be able to report to you that, so far as we have been able to determine, they have done so in a manner that has brought honor to the United States. We nevertheless recognize that we must engage in constant vigilance to ensure that this remains the case, and intend to do so throughout the duration of our mission in Iraq.

10. Is the Department of Justice currently drafting, or considering drafting, legisation to authorize the President to detain individuals as ''enemy combatants? If the Department is drafting or considering drafting such legislation, will you consult with us before submitting it to Congress?

The Department is not currently drafting or considering drafting such legislation. The Department does not believe that such legislation is necessary at the present time. Although the Department is still evaluating the full import of the Supreme Court's recent decision, the decision in Harmdi v. Rumsfeld, No. 03–6696, slip op. at 9–17 (June 28, 2004), confirms that additional legislation is unnecessary. In Hamdi, the Court held that in the Authorization for Use of Military Force, 115 Stat. 224 (Sept 18, 2001), Congress has ''clearly and unmistakably authorized detention'' of enemy combatants, id. at 12, including American citizens, where an enemy combatant is defined as a person who is ''part of or supporting forces hostile to the United States or coalition partners'' and who ''engaged in an armed conflict against the United States,'' id at 9 (internal quotation marks omitted).

Should circumstances change, the Department would always be willing to work with the Committee to ensure that necessary and appropriate legislation is enacted.

11. During the Judiciary Committee hearing last week, you mentioned the limitation placed on the torture statute (18 U.S.C. §2340–2340A) by 18 U.S.C. §7(9). This section was added to the definition of ''special maritime and territorial jurisdiction'' by section 804 of the USA-PATRIOT Act—originally an Administration proposal. The Administration explained at the time, in its sectional analysis, that the provision would ''extend'' Federal jurisdiction to ensure that crimes committed by or against U.S. nationals abroad on U.S. Government property did not go unpunished. Unmentioned in the Administration's explanation was that this provision creates a jurisdictional gap in our ability to prosecute acts of torture.

(A) Did the Department of Justice know and intend that the proposed amendment would restrict the applicability of the anti-torture statute?

(B) Would the Department support legislation to restore the pre-PATRIOT Act reach of the torture statute, making it applicable to U.S.-owned, U.S.-run, and U.S.-controlled facilities, including aircraft, ships, and other mobile sites, located outside of the United States? If not, why not?

(C) Would the Justice Department support further extension of the torture statute, to make it applicable anywhere outside the geographical borders of United States (i.e., the 50 states, the District of Columbia, and the commonwealths, territories, and possessions of the United States)? If not, why not?

(A) An inquiry with Department personnel who were involved in drafting the amendment to the provision defining the special maritime and territorial jurisdiction of the United States (''SMTJ''); 18 U.S.C. §7; has determined that they were unaware of the potential that the amendment had for affecting the applicability of sections 2340 & 2340A. To the contrary, the provision was intended, as the Department's section-by-section analysis indicated, to ensure jurisdiction over crimes committed by or against U.S. nationals at embassies and consular offices and on military bases and other U.S. facilities overseas. In particular, the amendment was intended to address a conflict among the courts of appeals concerning the extraterritorial application of an existing paragraph in section 7 and to codify the longstanding position of the United States that the SMTJ did extend to overseas bases. Compare United States v. Gatlin, 216 F.3d 207 (2d Cir. 2000) (holding, contrary to position taken by the United States, that section 7(3) does not apply extraterritorially), with United States v. Corey, 232 F.3d 1166 (9th Cir. 2000) (holding that section 7(3) does apply extraterritorially), and United States v. Erdos, 474 F.2d 157 (4th Cir. 1973) (same).

(B) The Department would support legislation making sections 2340 & 2340A applicable to U.S.-owned, U.S.-run, and U.S.-controlled facilities outside the United States. The question, however, assumes that such applicability was clear before the passage of the USA PATRIOT Act. As our answer to part A indicates, that is not enturely accurate. Rather, before the PATRIOT Act, there was a circuit split concerning the scope of the SMTJ and whether or not it applied to overseas military bases. Thus, under the view of the Ninth Circuit, the SMTJ extended to military bases overseas and accordingly sections 2340 & 2340A would not have appled to such bases. See Corey, 232 F.3d at 1172. Under the view of the Second Circuit, on the other hand, the SMTJ did not extend to bases overseas, and sections 2340 & 2340A would have applied to such bases. See Gatlin, 216 F.3d at 223.

The Department will gladly work with Congress to draft appropriate legislation to achieve the objective of applying sections 2340 & 2340A to such bases overseas. Simply returning statutory language to its pre-PATRIOT Act form, however, is likely not the best means for achieving that goal.

(C) The Department would have no objection to such legislation, and would work with the Committee to ensure that it is carefully drafted to achieve its intended effect.

* * *

We hope that this information is helpful. We will supplement this response with additional information relating to other questions for the hearing record as soon as possible. Please do not hesitate to contact this office if you would like additional assistance regarding this or any other matter.

Sincerely,

WILLIAM E. MOSCHELLA
Assistant Attorney General.

Mr. LEAHY. Fortunately, though, the letter and the way it has been described by the chairman is absolutely correct. He has been very straightforward in his description. But it does not say, and the question was asked of Mr. Gonzales and the White House, was he aware—was he, Alberto Gonzales aware—of the second Bybee memo. That does not require a classified answer. It is either a ''yes'' or ''no'' and he still refused to answer yes or no.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, out of deference to my Democratic colleagues this morning, I interrupted my remarks to allow Senator SCHUMER to speak briefly on the nominee. It now has been several hours since I last spoke. Let me briefly recap for those just joining this debate.

Everyone knows I support the nomination of Judge Gonzales to be the next Attorney General of the United States.

Early this morning, I talked about Judge Gonzales's inspirational personal background. I talked about his educational and professional qualifications, and they are many. I talked about all the awards he has won from so many civic organizations. I talked about many of the numerous organizations, individuals, and entities that support his nomination—virtually most strong Hispanic organizations, including the District Attorneys Association and the FBI Agents Association, and others, as well.

In short, I talked about why this man is the right person for this difficult job at this challenging time and why we should not stand in the way of his fulfilling this wonderful opportunity—the first Hispanic ever nominated to one of the big four Cabinet level positions. I even went over other major first-time Hispanic nominations to major positions in this country all the way from President Reagan, to the first President Bush, and finally to our current President.

I also talked about how this man—this good, honorable, decent man—is being treated by some like a scapegoat. Some of my colleagues are trying to unfairly blame Judge Gonzales for abuses committed by renegade soldiers at the Abu Ghraib prison. But Judge Gonzales, of course, was not in charge of the soldiers in the field. He was not the person telling soldiers what interrogation techniques they could or could not use. I, like the President, like Judge Gonzales, and like many of the American public, was sickened by the abuses that occurred at Abu Ghraib prison. But these violations are not going unpunished.

I talked about the investigations, prosecutions, and convictions the Defense Department has undertaken with respect to those perpetrators and how despicable those perpetrators are. I know we will see more prosecutions and convictions as time goes on. The Defense Department has been active on this, acted immediately, and has been acting ever since. It may not be published in the front pages of the newspapers and you may not hear about it on the 6 o'clock news, but these people are going to be brought to justice for their wrongdoing. To blame Judge Gonzales for this is making him a scapegoat. That is wrong.

That is not the only thing my colleagues are trying to unfairly blame Judge Gonzales for. They are trying to blame him for the so-called Bybee memo, a memo Judge Gonzales did not write—a memo that was written by an agency, the Department of Justice, that Judge Gonzales did not work in; an agency for which Judge Gonzales was not responsible. And there has been an implication here that he, as White House Counsel, should have reversed everything and told the Justice Department what to do. If he had done that, he would be criticized for that.

The fact of the matter is the Justice Department is the advisory body on these types of legal issues for the executive branch of Government. He may be White House Counsel, but that does not give him the right to change any opinion given by the Justice Department.

I brought out that on February 7, before the Bybee memo was brought forth, on February 7 of the same year, the President did sign a memorandum with regard to the Taliban and al-Qaida that basically said that although these prisoners did not qualify for Geneva Convention protections they should be treated humanely. We do not hear a lot about that memorandum. If we do, his critics will probably distort it.

I would like to spend a few minutes to focus specifically on the Geneva Conventions. There has been a lot of discussion and, frankly, a lot of misinformation. I would like to take a few moments to clarify. Some of the legal principles involved might sound a little complicated, but I will try to explain this as simply as I can.

The Geneva Conventions are an international treaty. One key question facing the United States as we fought back against the terrorists was whether Iraq, the Taliban, and al-Qaida should be treated differently under this treaty.

First, as we all know, treaties are signed by countries. They are not signed by individuals for individuals. Iraq signed the Geneva Conventions. There has never been any question that the Geneva Conventions apply to our conflict in Iraq where Abu Ghraib is located. Afghanistan also signed the Geneva Conventions. Afghanistan, however, has been embroiled in internal violent conflicts for 22 years. There was no legally recognized leader, no legally recognized central government and, for that matter, there were not even basic government services in the country at that time. The Taliban was a vile faction struggling for control of the nation, but it did not have anything like control over the entire country.

There was a question about whether Afghanistan was a failed state as a matter of international law. If it was a failed state, then the treaty, naturally, would not apply to it. Ultimately the President decided regardless of what the law requires, that he was going to apply the Geneva Conventions to the Taliban. That is what it says in the President's February 7, 2002 memorandum.

Going to the third category, al-Qaida is not a country. They are not a faction within a single country. They are a group of individuals from lots of different places who go around the world spreading terror and murdering innocent people. Simply put, they are a gang of terrorists, not a country. Since al-Qaida is not a country, they could not sign the treaty, nor would they, and we all know that. So it makes perfect sense to conclude that the President is not legally required to apply the Geneva Conventions to al-Qaida.

So far, the analysis has been pretty straightforward. You sign the treaty, the treaty applies to you. The next step is a little more complicated. Under the Geneva Conventions, all detainees are not treated alike. In order to receive preferential treatment as a detainee, you must qualify as a POW, a prisoner of war. In order to be considered a prisoner of war, the group must have an organized command structure, uniforms, or insignia, openly carry arms and obey the laws of war. Al-Qaida and the Taliban detainees cannot qualify as POWs.

Neither al-Qaida nor the Taliban have a permanent centralized communications infrastructure—the way you would expect to find such in a typical military organization. The Taliban is a loose array of individuals with shifting loyalties among various Taliban and al-Qaida figures. Defections and bribery are rampant.

Second, the Taliban and al-Qaida members wear no uniform or other insignia that serve as a ''fixed sign recognizable at a distance.'' They dress like civilians in that area of the world.

Third, although the Taliban carry arms openly, so do many in Afghanistan. They do not attempt to distinguish themselves from others carrying weapons.

Lastly, al-Qaida and the Taliban do not follow the laws of war. We are all too familiar with how al-Qaida operates since we saw their despicable handiwork on September 11, 2001. They dress as civilians. They specifically attack civilians after hijacking civilian commercial airlines. They transform civilian aircraft into weapons of destruction to murder thousands of ordinary, innocent human beings.

The Taliban used mosques for ammunition storage and for command and control meetings. They put tanks and artillery in close proximity to hospitals, schools, and residences. The Taliban has massacred hundreds of Afghan civilians, raped women, and pillaged villages. They use villages as human shields to protect stockpiles of weapons and ammunition.

In fact, there is no indication that the Taliban understood or considered themselves bound by or aware of Geneva Conventions. The Taliban made little effort to distinguish between combatants and noncombatants when engaging in hostilities. For example, they killed for racial or religious purposes.

So even if the Geneva Conventions applied to al-Qaida, it would not give them preferential treatment because they are not POWs. In fact, as I understand it, there is no significant difference between the treatment being accorded to the Taliban and al-Qaida, even though the Geneva Conventions only apply to the former, the Taliban.

Now, let me cut to the chase. The President's February 7, 2002, memorandum makes one thing crystal clear: Regardless of where and when the Geneva Conventions apply—regardless of whether the Taliban or al-Qaida are

POWs—the President says unequivocally that detainees are to be treated humanely.

This is a crucial point that has often gotten lost in some of the inflamed rhetoric being employed by the opponents of Judge Gonzales and the President. And let us be clear that a considerable amount of the criticism being lodged against Judge Gonzales is merely an attempt to cause political damage to the President himself.

That the purpose of the February 7 memo is to ensure that all detainees are treated humanely is evident by the fact that this concept is repeated four times in that memorandum.

First, you should know that this is clear from the title of the memo: ''Humane Treatment of al Qaeda and Taliban Detainees.''

The President makes his policy directive explicit in paragraph No. 3 of the memo:

> Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment.

He repeats the command again in the last sentence of paragraph 3:

> As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely.

The President repeats the command a fourth time in paragraph 5:

> I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely.

One last point on this. In addition to saying again and again that detainees must be treated humanely, the President's February 7, 2002, memorandum also mandates that the U.S. Armed Forces treat detainees in a manner consistent with the principles of Geneva to the extent appropriate and consistent with military necessity.

Now, while lawyers can hem and haw about what this precisely means, given the context of the quotation in the paragraph immediately following the POW analysis, it is logical to conclude that it means that the U.S. military shall accord POW treatment to al-Qaida and Taliban detainees unless military necessity dictates otherwise.

Let me also make one other thing clear. What happened to some detainees at Abu Ghraib was not humane treatment. We all know that. The Army knows that. Our military knows that. I think all of us here can agree with that. It is also clear to me that the abuses that occurred at Abu Ghraib were contrary to the President's February 7, 2002, memorandum to treat them humanely. Those who committed these abhorrent abuses can and should be vigorously prosecuted and punished, and they are. Right off the bat, the investigation took place. And right off the bat, they are bringing people to justice. There is no doubt about that.

I might add, the President is not given any credit for the prosecutions of Abu Ghraib. The desire of some who always want to score political points leads them to blame all wrongdoings on the President, even in a case like this where he had nothing to do with these actions. Judge Gonzales has made it clear that he does not defend the abuses that occurred.

I am sure there are many people out there who are wondering what any of this has to do with the nomination of Judge Gonzales. Well, I have to undertake this legal analysis because some people have unfairly attacked Judge Gonzales for a draft memorandum with his name on it. The memo was dated 2 weeks before the President's order on February 7, 2002, and it suggests that the Geneva Conventions should not apply to the Taliban.

Several allegations against Judge Gonzales have been raised in the media and elsewhere, and I want to set the record straight.

It appears from recent media accounts that this draft was not even written by Judge Gonzales. As is common in many Government offices, drafts are often initially written by lower level individuals and then edited and approved by the intended high-level author.

We also know this was an early draft because other documents from the State Department indicate that Secretary Colin Powell and legal adviser William H. Taft recommended extensive changes to the draft, as they should have. The recommendations include significant changes to the structure of the memorandum, and how the information is presented, as well as correcting statements of fact and specific language.

Although we do not know what Judge Gonzales actually advised the President, and we cannot because it was confidential advice to the President, we do know the President's February 7, 2002 memorandum is consistent with the views espoused by the State Department at the time.

Judge Gonzales has told this committee that this draft:

> does not represent the final advice given to the President.

It seems odd to me that our colleagues cannot accept his statement on that.

He continued:

> Because it does not embody my final views as provided to the President, I have not endorsed, nor do I have any occasion to disavow, the tentative judgments about certain provisions of the Geneva Conventions reflected in that draft.

Now, some will argue Judge Gonzales ought to tell the Senate precisely what advice he gave the President on this very sensitive issue. The fear I have is that if the Senate demands this information in this instance and the White House succumbs to that demand, it will undermine the candor with which future White House Counsels communicate with future Presidents. I think most people would argue it probably would. That is why these types of conversations are privileged, and not available to the Congress of the United States.

And, I might add, even when it is in the interest of the White House, in most instances this information remains privileged because the executive branch reasonably does not wish to set a precedent that will lead to Congress asking for access to every conversation that occurs in the White House.

In this case, we have some salient facts. The President did not see the January 25, 2002, draft prior to making his February 7, 2002, decision to treat all detainees humanely. And, more important, at the end of the day, President Bush issued a policy directive that did not go as far as some of the legal advisers within the administration told them he could go under the law.

Now, the draft says some provisions of the Geneva Conventions are obsolete and quaint, such as providing athletic uniforms, scientific instruments, advances of salary, and commissary privileges. People have quoted this out of context to say that Judge Gonzales thinks all of the Geneva Conventions are obsolete and quaint.

This is simply nonsense. President Bush and Judge Gonzales know how important the Geneva Conventions are to American military personnel. We all do. As Judge Gonzales told the Judiciary Committee on January 6 of this year:

> Honoring our Geneva obligations provides critical protection for our fighting men and women, and advances norms for the community of nations to follow in times of conflict. Contrary to reports, I consider the Geneva Conventions neither obsolete nor quaint.

Yet I have seen all kinds of comments suggesting otherwise. I know Judge Gonzales. I have worked with Judge Gonzales for 4 solid years. I knew him before those 4 years. He is a man of his word. I take him at his word on this important matter. So should my colleagues in the Senate.

Let me review this one last time because it is an important point. Judge Gonzales has told this committee in writing that he does not believe the Geneva Conventions are obsolete and quaint. He said so under oath in his confirmation hearing, and he said so again in writing in response to questions from Senators.

There have also been allegations that Judge Gonzales, because he has worked closely with President Bush for several years, is somehow incapable of having his own opinions and will be unable to give frank legal advice. I recall that similar accusations were made over 40 years ago with respect to the nomination of Robert F. Kennedy to be Attorney General of all things. As many Americans know, Robert Kennedy was President John F. Kennedy's brother and the brother of our distinguished Senator from Massachusetts and had previously served as the President's campaign manager prior to his nomination to the office of Attorney General. While there was a good deal of controversy whether he, too, could be

independent of his brother as Attorney General before he was confirmed, Robert Kennedy went on to become a great Attorney General, one who was and still is much admired by many in this country. I believe Judge Gonzales, too, can and will exercise that same independence.

I listened carefully to Judge Gonzales's responses during the committee's hearing, and I know that he fully understands the differences between the role of White House Counsel and the role of the Attorney General of the United States. As White House Counsel, in Judge Gonzales's own words:

I have been privileged to advise the President and his staff.

As Judge Gonzales further explained:

As Counsel to the President, my primary focus is on providing counsel to the White House and to the White House staff and the President. I do have a client who has an agenda, and part of my role as Counsel is to provide advice that the President can achieve that agenda lawfully. It is a much different situation as Attorney General, and I know that. My first allegiance is going to be the Constitution and to the laws of the United States.

Judge Gonzales understands that as Attorney General, when confirmed, he would have, as he describes it, ''a far broader responsibility to pursue justice for all the people of our great Nation, to see that the laws are enforced in a fair and impartial manner for all Americans.'' This transition is no different than the type many in this body have made over the years. People from this body, attorneys, work for all kinds of clients and every manner of clients. And the well-trained advocate is always aware of who his client is. To suggest that Judge Gonzales is somehow incapable of making this transition is more than insulting. It is despicable to make that suggestion. He is a bright guy with a lot of ability, and a record of which we should all be proud.

As someone who served in private practice, as a judge, in political positions, and as an advisor to the President, his record is testament to his ability to serve his client well no matter who that is. I know Judge Gonzales. I know he will make this transition. I guarantee you he is no ''yes'' man. He has the character, education, and experience to exercise independent judgment in the interest of the American public.

There have also been some allegations that Judge Gonzales's responses to the approximately 500 questions posed to him during the course of this nomination process were somehow incomplete. These allegations have been made notwithstanding the fact that the New York Times characterized Judge Gonzales's answers to the committee as ''one of the administration's most expansive statements of its position on a variety of issues, particularly regarding laws and policy governing CIA interrogations to terror suspects.''

Some Senators have quoted Judge Gonzales's answers out of context. They focus on the few sentences where they say he refused to provide complete information and ignore all the other sentences in response to some 500 written questions to describe at length all of his knowledge on the wide variety of issues raised by Senators.

Judge Gonzales is not someone who is trying to prevent the committee from seeing documents. To the contrary, Judge Gonzales was instrumental in the White House's release of hundreds of pages of documents revealing the administration's policies relating to the treatment of detainees last June. He helped negotiate among Congress, the Department of Defense, the Department of Justice, and the White House to declassify and publicly release documents relating to the humane treatment of al-Qaida and Taliban detainees, the application of the Geneva Conventions, the War Crimes Act, the Convention Against Torture, the Rome statute, as well as the Defense Department documents relating to specific techniques authorized and the report of the DOD working group which assessed the legal policy and operational issues relating to detainee interrogations in the global war on terrorism.

Frankly, there were good arguments for withholding some of this information or at least making it available to Congress in a classified or nonpublic forum so that the general public and our enemies in particular would not be so well informed about our interrogation techniques. But the administration and Judge Gonzales wanted to provide full disclosure to the public and declassified this information so that everyone would know what went on.

Just last week, Judge Gonzales submitted over 250 pages of responses to written questions after his hearing. That was after questions were supposed to be cut off. We used to do that in this body. We would give a fair amount of questions, which never amounted to as many as these. But just last week Judge Gonzales submitted over 250 pages of responses—single-spaced pages, by the way—to written questions after his hearing. I believe that Judge Gonzales attempted to answer the questions and be responsive. Although the deadline for submitting written questions expired on January 13, 2005, four Democratic Senators filed additional questions to Judge Gonzales on January 19, 21, 24, and 25; I understand even maybe up to the present time. Judge Gonzales provided written answers to all of those questions on or before January 25, 2005. Yet that is still not enough.

Some have tried to make a big deal out of the fact that Judge Gonzales did not personally conduct a search in response to overbroad requests for notes, memoranda, e-mail, audio recordings, or documents of any kind. What my friend from Massachusetts Senator KENNEDY fails to tell the American public, however, is that the White House informed the Judiciary Committee 2 months ago that Judge Gonzales recused himself from the decisionmaking process of releasing documents because of his pending nomination. Judge Gonzales repeated his recusal at his confirmation hearing in the first week of January. Obviously, a person in Judge Gonzales's shoes may have a short-term incentive to release documents to the committee when his nomination is pending. However, the White House may have a very different and legitimate view of such release as part of the historical relationship between the Executive Office of the President and the Congress in releasing information on, for example, matters pertaining to legal advice to the President and the White House Counsel and policy recommendations on matters of national security from White House components.

It makes sense that Judge Gonzales would recuse himself during this time period. I believe it was proper for him to do so. Given Judge Gonzales's recusal, it is understandable why he personally did not conduct a search of White House records. But placing the blame solely on Judge Gonzales is just not right.

Senator KENNEDY focuses on eight instances where Judge Gonzales did not conduct a search. What do these responses have in common? First of all, they are all incredibly overbroad. One request seeks production of all notes, memoranda, e-mail, audio recordings, or documents of any kind that reflect the occurrence and substance of all meetings in which specific interrogation techniques were discussed. The request is not limited to specific documents, or documents written by Judge Gonzales, or received by him. This request wants every e-mail by anybody in the Federal Government who participated in a meeting about interrogation techniques during a war. Come on now.

Another request seeks all notes, memoranda, e-mail, and documents that reflect the CIA's request for legal advice on how far it could go in conducting interrogations, or which interrogation methods it could use and any responsive actions by the White House Counsel's Office and the Department of Justice. Now, you have an overbroad request that holds Judge Gonzales responsible not only for things he did not write, but for e-mails written by others in two different agencies that he has no direct supervision over. Let's get real here.

Let me mention some other points about these requests. In response to each one of these, Judge Gonzales, to his credit, never complains that the requests are unfair and overbroad—even though they are. He responds by saying he has no notes, or that he does not know of any audio recordings, or that he is not aware of any responsive documents. Also, for each of these requests he explains that the materials, if they did exist, would fall under a privilege. Then he says he did not conduct a

search. Imagine how futile it would be to look for e-mail or handwritten notes of other people in other agencies about such a broad topic like interrogation techniques that would then be subject to a privilege?

I know what this tactic is. Ask for the kitchen sink in the hopes of trapping the nominee with an unartful answer, so it can be claimed that he is not forthcoming. In other words, this is pure, unmitigated politics.

It is entirely transparent that the anti-Gonzales vote is pure politics and nothing more.

Judge Gonzales is a good man. He has not tried to hide the ball. There may well be legitimate requests for specific documents made by members of the Judiciary Committee at a later date as we learn more about the abuses at Abu Ghraib. There may also be legitimate questions about when and under what circumstances various executive privileges apply. I don't know, there may be. But this is just not one of those occasions. It is as simple as that.

Look, this is not just any nomination. This is a nomination for the Attorney General of the United States of America. This is the first Hispanic ever nominated for that position, or for any of the big four positions in the Cabinet of any President. I am chairman of the Republican Senatorial Hispanic Task Force. We work with Hispanic people all over America who are every bit as devoted to our country as any citizen who has ever been in this country. I personally love Hispanic people. I can truthfully say I love this man as well because he is a good man. I have seen him give good advice. I have seen him work very hard to try to be accurate. I have seen him cooperate with our committee time after time. I have seen him keep his cool in the face of some of the outrageous requests that were made over the time I was chairman of the Senate Judiciary Committee. I have seen him run the White House Counsel's Office, and he has done a terrific job. He is a good administrator, a good lawyer. He has tremendous judicial experience.

This man, regardless of his background, should be confirmed immediately as Attorney General of the United States of America. Frankly, I know my friends in the Hispanic community, and Hispanic people all over America, are watching this debate, and they are sensing something very unfair going on here. Every Democrat who opposed this man on the Judiciary Committee—virtually every one, as far as I can recall—talked about his great and humble background, how he came from nowhere and accomplished all he did, and what a good man he is. But they always have some reason to vote against him.

I suspect there are a lot of politics being played here. We all know Alberto Gonzales has constantly been mentioned by the media and everybody else as someone who might ultimately wind up on the Supreme Court of the United States of America. Actually, if he never winds up there, being Attorney General is not too bad. It is one of the greatest positions in any country anywhere and certainly in our country. And to have this man come from the most humble of circumstances, which typifies the struggle every immigrant family in this country has gone through, and to not give him this opportunity when he is fully qualified for it, I think, would be a travesty. Let me conclude by telling my colleagues and the American public that I know Alberto Gonzales well. He is a good man. He is a fair man. He understands persecution. He understands prejudice. He understands the need to fight back to make it in this life, regardless of all of the obstacles in his way. I believe when he is confirmed, Judge Gonzales will make an excellent Attorney General. He has been fair to everybody on our committee time after time.

The Senate should not stand in his way of becoming the next Attorney General of the United States. I do not believe it will. I do not believe people should be voting against this good man. If people vote against him, we have to stop and think, ''Why are they doing that to a man of his quality?''

When Judge Gonzales accepted the President's nomination for Attorney General, he said the following:

> When I talk to people around the country, I sometimes tell them that within the Hispanic community there is a shared hope for an opportunity to succeed. Just give me a chance to prove myself—that is a common prayer for those in my community.

I ask my colleagues to do exactly that—give Judge Gonzales a chance to prove himself. He will not let you down. I urge my colleagues to vote for Judge Gonzales to be the next Attorney General of the United States, and we will be very wise if we do so.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). Under the previous order, the Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I find it ironic that we are debating the nomination of this fine nominee for Attorney General and hearing some vehement criticism of not just him but of this administration and its policies in Iraq and combating the war on terror, and when on Sunday we saw free Iraqis conduct their first democratic election in many years, with the kind of turnout that, frankly, brings a little embarrassment to those of us in America because they had such a tremendous outpouring of emotion and support for the opportunity to rise up against their oppressors, thanks to coalition forces and the sacrifices made by the American people and our allies, and be able to do what we do here on a regular basis, and that is let the will of the American people be known through the process of electing our representatives. But here we are, and shortly on the heels of the debate on the nomination of Condoleezza Rice as Secretary of State. Of course, what we are told by those on the other side of the aisle is the outcome of this debate is not in doubt. Even the opponents of Judge Gonzales, just as the opponents of Condoleezza Rice, even as they stand here and claim these are great American success stories, which they are, and claim to personally like and respect these nominees, at the same time we see them excoriated and abused by partisan politics which, unfortunately, I hoped would cease or at least be mitigated somewhat by the results of the election on November 2.

We saw on November 2 not only the President's reelection by substantial margins, but we also saw an increase in our side of the aisle in the Senate and larger numbers in the House. One reason I believe that happened was because of this debate on the wisdom of our policies of this Government, particularly over the last 4 years. We held a popular referendum on November 2 and, frankly, the politics of obstruction and anger were repudiated.

What the American people want and expect is that we will get the business of the American people done in this body and that we will not degenerate into partisan fingerpointing or namecalling, nor obstruction of the kind we have seen occur time and time again against this President's nominees, particularly the judges who have been nominated by this President to circuit courts.

We know that while our friends on the other side of the aisle did have an opportunity for self-examination and reappraisal on November 2, apparently they have been unable or unwilling to change their habits and their destructive approach to this process. Unfortunately, it causes good men and women, such as Al Gonzales and Condoleezza Rice, to have to go through a process that, frankly, does not dishonor them but I think fails to bring honor to this institution and to those who oppose their nominations.

There is no question that we have an obligation in the Senate to seriously conduct our advice and consent function, and certainly no one is suggesting that any Senator should not vote their conscience. That is not what we are talking about. What we are talking about is when we cross the line that should not be crossed between doing our duty, sent here as we were by the people of our various States, and engaging in partisan politics on the floor, particularly on nominations, it is unfortunate.

I want to speak now not about this caricature that has been created by those who oppose this nomination, not the person I really see described by his opponents that I do not recognize, but I want to talk about the real Al Gonzales.

I am pleased Judge Alberto Gonzales happens to be a friend. He is a talented lawyer and a distinguished public servant and a good man. He also happens to be a good Texan and an inspiring American success story. I am proud to call him my friend.

I have known Alberto Gonzales for a number of years, unlike most of the people who are in this body, and that just is because I worked with him and alongside him and had a chance to observe him day in and day out, as he first functioned as the President's then-general counsel when he was Governor of the State of Texas, when he then served in the office of secretary of state for the State of Texas, and then was appointed and then elected to serve on the Texas Supreme Court, which he did for a couple of years before the President of the United States asked him to leave his home behind and come to Washington to work with him in the challenges of the Oval Office, to serve as his legal adviser and White House Counsel.

Little did this President know and little did Alberto Gonzales know that September 11 would forever change the course not only of American history but their lives in such a dramatic and profound way.

The context I think the opponents of this nomination fail to take into account is how much America and our way of life was threatened by those who had no regard for human life, who had no regard for the law of war, but rather than attack our military in a battlefield chose to attack innocent civilians, resulting in the massive loss of human life in Washington, Pennsylvania, and in New York and resulting in almost a trillion dollars' worth of economic loss to the American economy.

Not only is this an extraordinary nominee and a good man, but I suggest to my colleagues that this President and his advisers, including his legal adviser, Alberto Gonzales, were met with challenges they never could have imagined they would have to undertake. It is important to have that context as we judge the work he did.

As I say, I have known Alberto Gonzales for many years, and I can tell you the media is absolutely right when they call him the man from Humble. For those who are not from Texas, that refers to Humble, TX, where he was raised, but also the fact that he is a modest, self-effacing man. He is the son of migrant workers. His childhood home, where his mother still lives today, was built by his father and his uncle.

As a child, he earned a little bit of money selling soft drinks at Rice University stadium and there, as he looked over the football games being played in that stadium, he dreamed of one day possibly going to school at Rice University.

Alberto Gonzales was the first person in his family to attend college. Because of the love and support of his family, his hard work and determination, he graduated from Rice University. In other words, his dream came true. Then he went on to graduate from Harvard Law School, two of the most prestigious institutions in this country.

Was it because he was born with a silver spoon in his mouth or was a child of privilege or knew powerful people? I suggest the answer to that is absolutely not. The reason Alberto Gonzales was successful in achieving his educational dreams is because of the love and support of his family and because of the hard work that in America ought to be rewarded and not discouraged.

Indeed, this is a man who not only, after he went to college, went on to work in one of the most prestigious law firms in the United States of America, but was one of its first minority partners. Yes, it was this young lawyer, after about 10 years of practice, who was first identified by an aspiring Governor of the State of Texas, George W. Bush.

It cannot be lost in this debate, as it goes on today, tomorrow, and Thursday, that Judge Alberto Gonzales is truly an inspiration to all of us who still believe in the American dream.

His nomination to be the 80th Attorney General of the United States of America, the chief law enforcement officer of this great country and our first Hispanic Attorney General, that story should by all accounts have a happy ending. But unfortunately that is not the way Washington works. Once again, we will see that this confirmation process is unnecessarily partisan, even cruel to those who have selflessly dedicated themselves to serving the American people. Only in Washington would a good man such as Alberto Gonzales, the personification of the American dream, someone who has pulled himself up by his bootstraps by dint of hard work and determination and the love and support of his family—only in Washington would we see that a man such as this would get raked over the coals for doing his job.

This must be a little disorienting to Judge Gonzales and his family, because, frankly, he comes from that part of America that believes America should always be a place where honesty, determination, and diligence are rewarded.

I want to talk a little bit about some of the specifics of the accusations made against Judge Gonzales, because I don't think we can take for granted that this is particularly well understood. They have to do with arcane matters, albeit important matters such as the Geneva Convention and the law of war, with the limits on interrogation techniques that can be humanely employed by the United States as a matter of policy, but first, I wish to point out that not only does a majority of the Senate stand ready to vote and confirm this particularly well-qualified and distinguished nominee, there are a number of groups around the country which support his nomination. I heard—and this happens to be a pet peeve of mine—that someone said the Hispanic Caucus in the U.S. House of Representatives opposes Alberto Gonzales's nomination.

What that person did not say is that the Hispanic Caucus in the House of Representatives is composed only of Democrats. Indeed, there are Hispanics, both in the House and in the Senate, who support Judge Gonzales's nomination, as well as groups from all around the country that believe this nomination should not hit a glass ceiling but, rather, be an example for all Hispanics who look for reward for their hard work and labor in American society and which see this as an opportunity to elevate one of their own as a role model to young boys and girls as they go to school and work hard and try to achieve their American dream. The National Council of La Raza, the Hispanic Alliance for Progress Institute, the Texas Association of Mexican American Chamber of Commerce, the New America Alliance, the American-Latino Business Initiative, the National Association of Latino Elected and Appointed Officials, the Congressional Hispanic Conference, the League of United Latin American Citizens, the Hispanic National Bar Association, the Latino Coalition, the National Association of Latino Leaders, the United States Hispanic Chamber of Commerce, the Hispanic Association of Colleges and Universities, MANA, a National Latino Association, the National Association of Hispanic Publishers, the Hispanic Roundtable, and the National Association of Hispanic Firefighters endorse Alberto Gonzales's nomination to serve as this Nation's 80th Attorney General.

I don't want those listening by reference to a solely Democratic caucus in the House of Representatives, by hearing they do not support his nomination to be under the misapprehension that Latinos in this country do not overwhelmingly support this nominee, because they do.

I would point out finally, with regard to the Hispanic Caucus in the House, the solely Democratic-member caucus, they didn't support Miguel Estrada's nomination to the District of Columbia Court of Appeals, either. Frankly, it is beginning to be an unseemly trend.

Let me talk a minute about the Geneva Convention because this is, as many legal matters are, somewhat confusing. Frankly, we get down so far into the weeds on this that people's eyes glaze over and roll back into their heads and they quit receiving any additional information. But the bottom line is this: Judge Gonzales advised the President that all detainees in the war on terror—whether they be al-Qaida fighters, whether they be Taliban, whether they be the Iraqi military when we went into Iraq; all—as a matter of policy of this Government, be treated humanely. In other words, Alberto Gonzales, this President, this Government, and all of its officials have said we oppose torture in any form as a means to get intelligence from detainees, whether they be classified as unlawful combatants or are covered by the Geneva Convention.

Indeed, that is what Alberto Gonzales said in a memo he wrote to the President dated February 7, 2002, and which

the President adopted. It is the policy of this Government to treat detainees—no matter how they be classified—humanely, and that we condemn the use of torture as a matter of national policy.

You would never know it by some of the statements, some of the misstatements and some of the disinformation that has been spread about this nominee. Unfortunately, it has been harmful to our effort in the war on terror. This should come as fairly straightforward information, but let me just emphasize it. I asked this question repeatedly during the course of the hearings we had with Judge Gonzales. I said: Does anybody here take the position that America should not use all lawful means to obtain actionable intelligence that would save American lives? Does anyone take the position that we should not use all lawful means to obtain actionable intelligence that would save human lives?

Thankfully, notwithstanding some of the rhetoric we have heard and maybe some of the confusion we have heard propagated during this debate, everyone said: No, we agree with that. You should use all lawful means to get actionable intelligence to save American lives.

What I was thinking back to was a hearing we had before the Senate Armed Services Committee on May 14, 2004. I asked that question of two of our Nation's most distinguished military leaders, MG Geoffrey Miller, who was in charge of the detention facilities there at Guantanamo, where many of the al-Qaida fighters are kept who have been the subject of news reports and some discussion and litigation. I also asked GEN John Abizaid, who is the commander of the U.S. central command, including Iraq. I will just read what General Abizaid said:

I will start with a question.

I said: ''In your opinion, General Miller, is the military intelligence you have been able to gain from those who have recruited, financed and carried out terrorist activities against the United States or our military, has that intelligence as a consequence that you gained saved American lives?''

General Miller said: ''Senator, absolutely.''

So I asked General Abizaid, who was also there on the same panel, I said: ''Would you confirm for us, General Abizaid, that it is also true within the Central Command''—which includes Iraq, Afghanistan, and I think it covers 26 countries. I may be off one or two.

But General Abizaid, the commander of U.S. Central Command, said: ''Senator, I agree that is true. And I'd also like to add that some of these people we are dealing with are some of the most despicable characters you could ever imagine. They spend every waking moment trying to figure out how to deliver a weapon of mass destruction into the middle of our country, and we should not kid ourselves about what they are capable of doing to us and we have to deal with them.''

I said: ''General Abizaid, if we needed any other reminder than that of the death of Nicholas Berg, I believe that reminds us again in a graphic fashion.''

You will recall that it was Nicholas Berg who was captured by terrorists, who then was beheaded on camera, and that film was shown to the entire world.

Our enemy does not play by the rules. They are not constrained by the law of war or the Geneva Convention. They believe it is perfectly acceptable to kill innocent civilians by suicide bombing attacks, as we have seen. And they believe it is perfectly acceptable to behead unarmed hostages as a means to carry out their reign of terror.

On the matter of the Geneva Convention, it is clear that it is important for us to get actionable intelligence using humane and legally acceptable means. Any suggestion that Judge Gonzales believes inhumane or illegal means are acceptable is simply not supported by any facts.

Frankly, on the matter of the applicability of the Geneva Convention, Judge Gonzales is right. You don't have to take my word for it.

First, I heard the Senator from Utah, Senator HATCH, former chairman of the Judiciary Committee, point out that al-Qaida never signed the Geneva Convention. But people may say, Well, that is a technical matter but it is part of it.

I will tell you that the Red Cross's own guidelines, which I hold here in my hand, have four requirements, four conditions of lawful combat, none of which al-Qaida meets.

Here again I ask: Does anyone in this body or anywhere across the country seriously argue that al-Qaida complies with the law of war? Judge Gonzales is not binding himself in his legal conclusion about the applicability of the Geneva Convention. Even though you say it might not meet the letter of the rules set out in this book I held up, the International Committee of the Red Cross Guidelines on the Geneva Convention, I would suggest this is important. Three Federal courts have concluded that Judge Gonzales's legal advice was correct. It has also been endorsed by numerous legal scholars and international legal experts across the political spectrum, as well as the 9/11 Commission, as well as a report given by the Schlesinger Commission, which was one of the commissions appointed to review the detention operations both at Guantanamo Bay and Abu Ghraib.

Finally, in addition to those decisions by the Federal court, the 9/11 Commission, and the Schlesinger report, I would say a brief filed in a recent Supreme Court case by former Carter administration officials, former State Department legal advisers, judge advocates general, military commanders, and liberal international law scholars, has agreed with Judge Gonzales's conclusion about the applicability of the Geneva Convention to al-Qaida.

As a matter of fact, these legal scholars said the President's conclusions that members of al-Qaida and the Taliban are unlawful combatants is clearly correct.

I would say to those who have been loose with the law and facts with regard to the Geneva Convention, they need to doublecheck their information, because time and time and time again Judge Gonzales's legal advice to the President has been shown to be correct.

But I must say again, this is not the same as saying we are going to treat these detainees in an inhumane fashion or that we are going to engage in torture. We are not. But some have inflated those two, saying if the Geneva Convention doesn't apply, what you are saying is there are no rules and anything goes, which is absolutely false. That is not what I am saying. That is not what Judge Gonzales said, that is not what the President says, and that is not the policy of the U.S. Government.

One last thing on the Geneva Convention. My father's generation, which was part of the ''greatest generation'' that fought in World War II—there are a lot of television shows and movies that depict how POWs are maintained. One of them I remember watching when I was a kid was called ''Hogan's Heroes.'' You know what the Geneva Convention is designed to do—to protect American soldiers by providing reciprocal treatment by nations that we are at war with so our soldiers, sailors, marines, and airmen will be kept in a humane and appropriate fashion. But, of course, that presupposes the Geneva Convention applies, and that your enemy respects the law of war and shows some sort of self-restraint, something al-Qaida and the Taliban have not shown at all.

But does anybody believe that we ought not to be able to entice detainees to respond by offering creature comforts or other preferential treatment?

For example, when I went to Guantanamo and observed detention of al-Qaida terrorists there, it was explained to me by General Miller that they would sometimes use a little better food, maybe a change of the diet, perhaps allow people to cook on a grill outside and sort of encourage them to cooperate by more appetizing food, or maybe even move them from an individual cell into a community cell block where they could associate with one other and have a little greater freedom of movement. Those were some of the techniques being used there which would not be available if the Geneva Convention applied.

Surely those who oppose this nomination cannot believe that al-Qaida terrorists deserve to be treated better than an American citizen accused of a crime, which is in essence what they are saying.

I know I have dwelled upon this subject for a while, but let me conclude on

this because, frankly, you hear the same old, tired, worn-out arguments being brought up time and time again without regard to the facts as I have explained them or the law as I have explained it.

There was a time actually when President Reagan was in office where there was a proposed amendment to the Geneva Convention, known as Protocol I of 1977, that would have actually extended the Geneva Convention to terrorists. President Reagan said: ''We must not, and need not, give recognition and protection to terrorist groups as a price for progress in humanitarian law.'' We did not adopt that amendment but, indeed, we rejected it.

Notably at the time, even the New York Times and the Washington Post agreed. The Times called the President's position ''sound'' while the Post said it was right and even accused opponents of that of hijacking the Geneva Convention.

But, my, how far we have come to this hyperpoliticized environment where the facts and the law seem to take a backseat, and continuation of some of the political campaign tactics that we saw before November 2 have now carried over after the election not directed only at the President but now directed at his nominees.

All this support from multiple Federal courts, the 9/11 Commission, the Schlesinger report, liberal international legal scholars, Carter administration officials, even the New York Times and the Washington Post, and yet Judge Gonzales is being criticized by opponents of his nomination for taking the exact same position with regard to the applicability of the Geneva Convention.

All I can say is, it is only in Washington.

Let me touch on one other legal issue that gets down into the weeds. Judge Gonzales has been criticized for trying to understand what Congress meant when it passed the law prohibiting the use of torture, the so-called torture statute. The memo he is being criticized for he did not write, and the language defining what was torture and what was not torture that he is being criticized for, he did not write that statute either. Congress wrote that statute.

If Judge Gonzales, the officials at the Department of Defense, if the U.S. Government, including this administration, had so little regard for the law and basic human norms like humane treatment of detainees, why in the world would they go through all of this trouble to try to figure out what exactly did Congress intend and what are the limits? The reason is not to find a limit so you can find a way around the statute, it is to find how do you comply with the law because Government officials know if you violate the law, you, too, are accountable in a court of law.

Frankly, today—maybe it is a sign of the times—even military commanders, the Secretary of Defense, and other high Government officials do not make a move without consulting their lawyer because of their concern, No. 1, about complying with the law; and, No. 2, the consequences of failing to comply with the law.

It is simply unfair to attack Judge Gonzales again for a memo he did not write and a statute that defines torture that he did not write either, that Congress did. So I suggest some of the opponents of this outstanding nominee, if they do not like what the torture statute says, if they do not like the effort to try to understand and explain it, maybe they ought to look in the mirror and maybe we ought to go back to work and be more clear about what we mean when we say torture is illegal and what the limits are of that.

Again, everyone agrees—or at least I have not heard anyone object yet—to the goal of using all lawful means to obtain actionable intelligence to save American lives. And how can you determine what those lawful means are unless you examine the treaties and the statutes and other laws that deal with what the permissible limits of interrogation techniques are and use that as a bright line to determine what is legal, permissible, what is humane and what is not.

Let me mention, some have again tried to confuse the issue by taking the criminal conduct of a few at Abu Ghraib prison and suggesting that somehow this reflects the policy of this administration and of the U.S. Government.

Not only is that suggestion an insult to all law-abiding Americans, and particularly those men and women in uniform who are serving honorably and who made the celebrations following the election in Iraq on Sunday possible, but to try to paint with such a broad brush and to say this is a matter of policy or practice and nobody cares what the law is and, you know what, we are going to take a few bad actors and people who cross the line between legality and illegality and we will basically suggest everybody is in the same big pot. That pot is people who have committed criminal acts against detainees and prisoners at Abu Ghraib.

It is safe to say that everyone agrees Abu Ghraib was a shameful episode in our Nation's history. Yet again some want to actually exploit that tragedy, that shameful episode by a few, for political points. Abu Ghraib is a serious matter. It should be treated seriously. Indeed, it has been.

The Senate Armed Services Committee has held hearing after hearing after hearing to try to get to the bottom of what happened. The U.S. Department of Defense has conducted at least eight different investigations to try to figure out what went wrong and how to make sure it does not happen again, but to also hold those who cross the line into criminal conduct accountable. Indeed, we have seen that happen.

Abu Ghraib should be treated seriously and not politically. Even the Schlesinger report—and I know there have been suggestions that somehow the acts of a few miscreants at Abu Ghraib reflect broad, widespread disregard for basic human rights of these detainees, or maybe somehow reflects the use of permissible interrogation techniques approved by the Department of Justice—here again the Schlesinger report, composed of a bipartisan commission to investigate what happened at Abu Ghraib, concluded:

> No approved procedures called for or allowed the kinds of abuses that, in fact, occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities.

If there is no evidence of a policy of abuse promulgated by senior officials or military authorities, and if there is no evidence whatever that Judge Gonzales was in any way responsible for this, why are we talking about Abu Ghraib during Judge Gonzales's confirmation? Again, I suggest this is not about Alberto Gonzales and his fitness to serve. This, unfortunately, has crossed the line into partisan politics, a place we should not go.

I am proud of my friend, Judge Alberto Gonzales. He is a source of great inspiration and pride to his family, his friends, and to the great State of Texas from where we both come. Time and time again, Judge Gonzales has done his duty in the war on terrorism. It disheartens me to see him held up to ridicule, distortions, and outright lies for being the patriot that he is.

I also will speak, because I know others will address this—I have not been able to listen to all of the debate, but I have quite a bit of it. I know this matter came up in the committee and it is important to set the record straight. Judge Gonzales appeared before the committee and answered question after question by the members of the Senate Judiciary Committee. Of course, that was broadcast on C–SPAN for people all across the world to see. My own impression was that Judge Gonzales did his very best to answer the questions that were asked of him.

Some members of the committee purported to be dissatisfied with the opportunity they were given to ask questions, and they had additional questions to ask. I hold in my hand more than 400 questions—and these are on single-spaced pages—more than 400 questions asked of Judge Gonzales after the hearing, and they generated 440 responses encompassing 221 single-spaced pages. After the New York Times argued that Judge Gonzales was very forthcoming in his responses to the committee, there was another request made, and at that time an additional 54 written responses were provided on 27 single-spaced pages. There were requests for copies of documents, some of which I have in my hand. I do not claim these are all of them, but I do believe it is a representative sample of what Judge Gonzales was actually provided. I will get to who provided it in a minute.

I think all fairminded people would conclude not only did Judge Gonzales attempt, to the best of his ability, to answer questions asked him of the committee when we were in open session, but at least on two occasions answered other questions. On one occasion he gave 440 answers in a 227-page, single-spaced response, again provided additional written responses in 27 additional pages, and he also provided more than 200 documents to go along with his answers.

So I think any fairminded person would have to conclude Judge Gonzales has tried his best to be responsive. I do think it is important to point out, as I believe Senator HATCH did earlier, that actually Judge Gonzales recused himself from providing these responses or answering the questions. In other words, he felt it was improper for him to have a personal hand in crafting the responses to the document requests or necessarily questions directed to the White House or to some other party.

So many of the responses, particularly to document requests, came from the White House Counsel's Office provided by, I believe it was Mr. Leitch, that Judge Gonzales had actually no hand in. But that was in an effort on his part to try to be fair and even-handed and to basically take himself out of any controversy and leave it up to the committee, those requesting the documents, and the White House. I believe that was appropriate.

So time and time again, we have seen that the real Al Gonzales is not the caricature that has been painted by his opponents during this confirmation process. Time and time again, we have seen that not only do the American people view Alberto Gonzales as a personification of the American dream, he is a source of pride and admiration for Hispanic organizations and Hispanics all across this great land of ours, as he well should be.

Notwithstanding what we have heard from opponents of this nomination, and of this administration, Judge Alberto Gonzales has condemned the use of torture on detainees, prisoners of war, anyone in American custody. Indeed, he has insisted, as a matter of American policy and law, on humane treatment. But he also believes, as the true patriot he is, that it is important we not lose the overall context of where this is happening and how this is happening.

Alberto Gonzales believes, as I believe everyone—at least no one objected here on this side of the ocean—who supports freedom and democracy for the Iraqi people believes, it is important we continue to use all lawful means to obtain actionable intelligence to save American lives and to help ensure our success against the insurgents who still plague Iraq.

I believe that on fair analysis by those who would listen to the facts and the arguments on both sides of this particular debate, there is only one reasonable, nonpolitical conclusion, and that is, this nominee should be confirmed, and should be confirmed overwhelmingly by the Senate.

After we saw the opposition to Condoleezza Rice's nomination, I was gratified to see that at least she received the vote of 85 Members of the Senate in a bipartisan fashion. But I was troubled when, even though several members of the Senate Judiciary Committee said they would likely be voting in favor of Alberto Gonzales's nomination, they have now changed their tune. We saw a strict party-line vote in the Senate Judiciary Committee: all Republicans supporting his nomination, all Democrats opposing it.

So, unfortunately, I was left with the conclusion that we have seen now again a continuation of the bitter politics of this confirmation process which not only I think fails to bring honor to this institution but which I think does a real disservice to the honorable men and women who agree to serve in important positions such as Secretary of State and Attorney General.

But I also say it does not bode well for the hoped-for beginning of a new Congress on the President's judicial nominees. We know the President intends to send up 10 nominees who were previously filibustered by the other side. I would have thought that after the election they would have reconsidered that course. But here again, I think we have seen an unfortunate continuation of the tactics and the bad habits that perhaps our opponents in this debate have lapsed into. And perhaps they know no other way to proceed, other than through obstruction and through mischaracterization of this nominee's fine record. We should confirm Alberto Gonzales as the 80th Attorney General of the United States, and do so overwhelmingly.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. MARTINEZ). Under the previous order, the Chair now recognizes the Senator from Massachusetts.

Mr. KENNEDY. I thank the Chair. I talked to the floor manager and indicated I was going to ask unanimous consent that the Senator from Florida, Mr. NELSON, be recognized and permitted to speak for 15 minutes after I yield the floor.

Mr. SPECTER. Mr. President, is there a 15-minute time limit on how long Senator NELSON will speak?

Mr. KENNEDY. That was the time he requested, and that is the time I ask unanimous consent for.

Mr. SPECTER. Sounds good.

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

Mr. KENNEDY. I thank the Chair.

Mr. President, as others have said, this is an extremely important nomination. I think all of us in this body take our responsibilities seriously. Those of us who have expressed some concern and reservation, even opposition, to this nominee are filled with admiration about his own personal story. I have said at other times, I wish I could vote for the story, not the individual, because the story, as has been pointed out, is the story of the American dream.

But there are decisions that were made when this nominee had important responsibilities that I think are in conflict with American values. The primary issue I am concerned about and that I find should be of concern to the American people is his attitude when he was the President's Counsel on the development of a policy of torture, which has been recognized by the Federal Bureau of Investigation, by the Central Intelligence Agency, by the Defense Intelligence Agency, by the Red Cross.

There is no question that he was at the epicenter in terms of the development of that policy. I think that is what is at issue; at least it is for me. And I think it is important that our colleagues have an opportunity to listen to the record.

I listened to my friend and colleague from Texas speak on his behalf, and I certainly respect his presentation. But I think the facts speak otherwise on a number of important points.

Earlier the chairman of the committee, Senator SPECTER, said in reference to the correspondence from the Department of Justice that he was not satisfied with the Justice response to Senator DURBIN's and my request for the memos relating to a New York Times story, again related to torture. And I am certainly not, either.

What the Justice Department said was that they brief the Intelligence Committee on these memos and the materials then are classified. That does not help the rest of us. We still need to know whether the Times story was accurate. We are all cleared, obviously, as Members of the Senate to classified information. We need the information to decide on the Gonzales nomination, and we should have it before the vote.

In the final paragraph of the note from the Justice Department, it says:

> Finally, the Office of Legal Counsel in its recent memorandum of December 30 stated we have received this office's prior opinions addressing issues involving interrogation of detainees and do not believe that any of their conclusions would be different under the standards set forth in the memorandum.

So the Justice Department piles secrecy upon secrecy.

Then in a letter received today, they refused to provide the second Bybee memo.

Justice says basically what the administration has said: Don't worry, it is taken care of. You in the Senate don't have to worry very much about it.

I find that troublesome.

Mr. SPECTER. Will the Senator from Massachusetts yield?

Mr. KENNEDY. I am glad to yield briefly.

Mr. SPECTER. I think the Senator misunderstood me. I did not say that I was dissatisfied with what the Department of Justice had submitted. What I

did was to ask them to respond to the letter which I received this morning from you and Senator DURBIN, and they responded with a letter which I have put in the RECORD where they have said that the second memo was not a memo that went to Judge Gonzales, but it was a memo that went from the Department of Justice to another client who had inquired as to what were the parameters of appropriate questioning. And the Department of Justice said that it had classified information and they would not release it and that it had been identified in previous correspondence with Senator LEAHY and that it had been the subject of a briefing of a chairman of a relevant committee on the customer client.

I think all of this may boil down to a request by the CIA—I am speculating now; I want that clear for the record because that is not what the letter said—in that there was later a briefing to the chairman of the Intelligence Committee. So the matter did not go to Judge Gonzales, and that is a reason for not making the disclosure because he did not actually receive it. But I thank the Senator from Massachusetts for letting me comment. But I had not said that I was dissatisfied with what the Department of Justice had done.

Mr. KENNEDY. Mr. President, this is all about the issue of torture. We are talking about torture and the role that Mr. Gonzales played in the development of the dramatic change in American policy that overrode statutes that had been passed in the Senate and treaties which the Senate had signed. It is about torture. He is the legal counsel for the President. I will get back into the history of his role in this. But to dismiss a relevant document that is about torture, that is related to the subject matter of Mr. Gonzales, and think that we don't have an opportunity or right to review that, I find troublesome. I don't know what the administration is attempting to hide. I will come back to that later in my presentation about the failing of the responsiveness of Mr. Gonzales on these issues. It seems to me that any fair reading of this memoranda, of the questions that Senator DURBIN and I asked, and reading of the Department of Justice memorandum would find them completely unresponsive. If that is not what the chairman of the committee says, I say it. I will move on.

This is one of the most important votes the Senate will take this year. The issues raised by Mr. Gonzales's nomination go to the heart of what America stands for in the world and the fundamental values that define us as a nation: our commitment to individual dignity, our respect for the rule of law, and our reputation around the world as a beacon for human rights, not as a violator of human rights.

President Bush said it well in his inaugural address last month:

From the day of our Founding, we have proclaimed that every man and woman on this earth has rights, and dignity, and matchless value, because they bear the image of the Maker of Heaven and Earth.

The world is watching to see if our actions match our rhetoric.

How can the Senate possibly approve the nomination of Mr. Gonzales as Attorney General of the United States, the official who symbolizes our respect for the rule of law, when Mr. Gonzales is the official in the Bush administration who, as the White House Counsel, advised the President that torture was an acceptable method of interrogation in Afghanistan, Guantanamo, and Iraq? Torture is contrary to all that we stand for as Americans. It violates our basic values. It is alien to our military's longstanding rules and tradition. We send our men and women in the armed services into battle to stop torture in other countries, not to participate in it themselves.

These values did not change or become less relevant after 9/11. Americans did not resolve to set aside our values or the Constitution after those vicious attacks. We didn't decide as a nation to stoop to the level of the terrorists. To the contrary, Americans have been united in their belief that an essential part of winning the war on terrorism and protecting the country for the future is safeguarding the ideals and the values that America stands for at home and around the world.

Americans agree that torture is and should remain beyond the pale. A recent pole in USA Today showed that Americans strongly disapprove of the interrogation tactics that have been used in Iraq, Afghanistan, and Guantanamo, including the use of painful stress positions, sexual humiliation, threatening prisoners with dogs, threatening to ship them to countries known to practice torture. The American public has held fast to our most basic fundamental values. How could our Government have gone so wrong?

Mr. Gonzales is at the center of a torture policy that has run roughshod over the values that Americans hold so dear. On issue after issue in developing this policy he has endorsed expediency over the rule of law. He adopted an absurdly narrow definition of torture in order to permit extreme interrogation practices. He advocated an unjustifiably expansive view of Presidential power, purporting to put the executive branch above the law. He ignored plain language of the Geneva Conventions in an attempt to immunize those who may commit war crimes. He continues to push a discredited interpretation of our treaty obligations to permit the CIA to commit cruel, inhuman, and degrading acts outside of the United States. He refuses to be candid about his interpretations, policies, and intentions.

The administration's policy on torture was established in August of 2002 in a Justice Department document called the Bybee or, more accurately, the Bybee-Gonzales memorandum. The memorandum was written at Mr. Gonzales's request. It reads: ''Memorandum for Alberto R. Gonzales, Counsel to the President.''

The first two sentences read:

You have asked for our Office's views regarding the standards of conduct under the Convention Against Torture and the Anti-Torture Statute passed by Congress in 1994. As we understand it, this question has arisen in the context of the conduct of interrogations outside the United States.

After its release in August 2002, the memoranda became the official policy on interrogations by the Defense Department and the CIA for 2½ years, until it was repudiated just last month at the last minute on the eve of Mr. Gonzales's nomination.

Yet, Mr. Gonzales refused to tell us anything about how the Bybee-Gonzales memorandum was written and why he ordered it. We know from press reports that the C.I.A. asked him for advice on how far the agency could go in interrogating detainees. In July 2002, he held meetings with other administration officials to discuss how to legally justify certain interrogation methods. He refuses to tell us anything about those meetings.

I have here the questions I had submitted, which were filed on January 18:

Did you participate in meetings where specific interrogation techniques were discussed?

I will include the full answers, but included in the answer is this:

For me to provide details about the methods of questioning terrorists mentioned in meetings that I attended would entail discussing classified information, and I am not at liberty to do so.

Could you tell the positions taken by the individuals present at the meetings when these topics were discussed?

Any meeting of the type you described, any records reflecting the information you specify would involve predecisional deliberations, and I am not at liberty to disclose.

What are predecisional deliberations? Is that executive privilege? If so, why don't they say it? If not, he has a requirement, and the committee should not have passed them out unless he was going to answer the questions.

Then it goes on:

Identify any notes or memoranda reflecting the CIA's request, any responsive actions by your office and the Department of Justice.

Any meeting of that type would involve predecisional deliberations and I am not at liberty to disclose.

Well, in preparation for your hearing, or since the hearing, did you review documents relating to the Bybee memorandum and its history?

I have conducted no search to the extent the documents requested may exist; moreover, they would involve deliberative material and I am not at liberty to disclose.

I listened to my colleagues on the other side talk about all of the questions asked, and I have 4 pages, 5 books, 16 documents. These are the answers. This is all part of the record. ''I am not at liberty to disclose,'' he says.

It goes on:

Identify notes or correspondence reflecting advice or assessments, recommendations and your views on these issues.

Answer:

I have not conducted a search.

The issue was torture.

I have not conducted a search. Any records reflecting the information you specify would involve deliberative material, and I am not at liberty to disclose.

There it is, Mr. President. I will not take the time to go on. I will include those questions in the RECORD. They conducted a word search about torture, another word. It didn't kick out and they said: We conducted a complete search, and this is the best we can do for his answers. It is an insult to not just the Senate of the United States but the American people on the issue of torture.

We are talking about basically the single issue that is involved in the remarks I am making, about his role in the development of torture. Talk about values in this country, this is torture.

He says he can't remember what specific interrogation methods were discussed.

He can't remember who asked for the Justice Department's legal advice in the first place.

He can't remember whether he made any suggestions to the Department on the drafting of the Bybee-Gonzales Memorandum, although he admits that ''it would not be unusual'' for his office to have done so.

He doesn't know how the memo was forwarded to the Defense Department and became part of its ''Working Group Report'' in April 2003, which was used to justify the new interrogation practices at Guantanamo. Those practices, in turn, to use the obscure word resorted to by the administration, somehow ''migrated'' to U.S. military operations in Afghanistan and Iraq, as if no human hand had been involved in the dissemination.

Torture became a pervasive practice. The FBI says so. The Red Cross says so. The Defense Intelligence Agency says so. The Defense Department says it has investigated more than 300 cases of detainee torture, sexual assault, and other abuse. Additional allegations of abuse—many of them too sickening to be described in open session on the floor of the Senate—are reported almost daily. Yet, Mr. Gonzales can't remember the details of how any of it happened.

The Judiciary Committee has repeatedly asked Mr. Gonzales to provide documents on his meetings, evaluations, and decisions on the Bybee memorandum. These documents would speak volumes about all the issues Mr. Gonzales says he has trouble remembering. Yet he refuses to provide the documents. He won't even search for them. In his responses to our written questions, Mr. Gonzales stated eight times that he has not ''conducted a search'' for the requested documents. In other words, the documents we want may exist, but he's not going to look for them. It's hard to imagine a more arrogant insult to the constitutional role of the Senate in considering nominations.

Mr. Gonzales refused to answer other questions and requests on the grounds that they would involve ''classified information,'' ''predecisional'' or ''internal deliberations,'' or ''deliberative material'' None of these grounds is sufficient. There is no legal prohibition against providing classified material to Congress. It's routinely provided to Congress and discussed in closed meetings. There is no recognized privilege for ''predecisional'' or ''deliberative'' materials. The only exception is in the rare case where the President himself decides that his interest in secrecy outweighs the public interest in disclosure, and he himself invokes executive privilege. That hasn't happened here.

It was clear when Mr. Gonzales was nominated that his involvement in the policy on prisoner detention and interrogation would be a major concern of the Senate, and that the Senate would need full information and materials on this subject. Serious abuses of detainees occurred in Iraq, Afghanistan, and Guantanamo. Mr. Gonzales's role in developing their legal justification goes to the heart of the issue whether he should be confirmed as the Nation's chief law enforcement officer.

If we vote to confirm this nominee without insisting on answers to our Questions, we'll be abdicating our advice-and-consent responsibility and weakening our oversight function precisely when it is needed most.

The Bybee-Gonzales memorandum was not a law review article or newspaper op-ed article. As Mr. Gonzales himself has said, it was the definitive legal opinion by the Justice Department on the rules on torture for the entire executive branch of the Government.

We learned this past weekend from a New York Times article that the Justice Department's Criminal Division—then headed by Assistant Attorney General Michael Chertoff, now the nominee to head the Department of Homeland Security—was advising the CIA on the legality of specific interrogation techniques, using the Bybee-Gonzales memo as its legal guideline.

Further, the Times reported that there is a second Bybee memo which goes into even more detail than the first about which methods of coercion can be used. We have repeatedly asked for information about the original Bybee-Gonzales memo and how it was used. The nominee and the White House have stonewalled us. We have repeatedly asked for other documents to be produced that would be relevant to understanding the first Bybee-Gonzales memo. The nominee and the White House have stonewalled us.

Yesterday, Senator DURBIN and I wrote a letter to the ranking members of the Judiciary and Government Accountability Committees outlining the pressing need for all relevant documents before we proceed to fully consider the nomination. Senator DURBIN and I wrote:

It is clear that the Senate should have the documents before it votes on these two nominations, since such materials go to the heart of the qualifications of the nominees to serve in the sensitive and important positions which they have been nominated for.

As far as we know, until the Department released its revised version of the memorandum last month, the Bybee memorandum was the official and definitive Justice Department opinion on the definition of torture, on the legal defenses for those who commit torture, and on the power of the President to override laws and treaties on torture.

Given the recent New York Times article, it may be that in addition to the second Bybee memo, which we do not have, there are other memos on torture that the White House refuses to disclose.

Harold Koh, a leading scholar of international law and Dean of the Yale Law School who served in both the Reagan and Clinton administrations, calls the Bybee memorandum the most clearly legally erroneous opinion he has ever read. As he told the Judiciary Committee:

If the counsel for the President receives such an opinion, you would have expected him to do at least one of two things: First, reject it on the spot and send it back or, second, send it to other parts of the government and have them give a second opinion, particularly the State Department which, I believe, following the policies in the U.S. Report on the Convention Against Torture, would have said that the opinion is flatly wrong.

Instead . . . that opinion was allowed to become the executive branch policy, was incorporated into the DOD working group report, and remained as executive branch policy for some 2½ years, during which time I believe that a permissive environment was inevitably created.

That is what Harold Koh said at the hearing. I hope every Member of the Senate will take the time to read his testimony.

In his response to our questions about the Bybee memorandum, Mr. Gonzales said he has ''no specific recollection of [his] reaction to the conclusions, reasoning, or appropriateness as a matter of policy of any of the particular sections of the memorandum at the time [he] received it 2½ years ago.''

He did say, however, that he believed at the time it was ''a good-faith effort'' to interpret the antitorture statute. At the hearing, he told Senator LEAHY:

I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department.

Let's review those conclusions. They are summarized on the memo's final page. The Bybee memorandum made three basic points. First, it said that torture means only acts that inflict the kind of pain experienced with death or organ failure. That is what the memo said: The pain ''must be of an intensity akin to that which accompanies serious physical injury, such as death or organ failure.''

Second, the memo said that the President has the inherent constitutional power as Commander in Chief to

override the prohibitions against torture enacted by the Congress. Application of the antitorture statute ''to interrogations undertaken pursuant to the President's Commander in Chief powers may be unconstitutional,'' the memo said.

Third, the memo said that even if a Government official were to commit torture under the extremely narrow definition set forth, abusers could still invoke the defenses of ''necessity'' or ''self-defense.'' As the memo states, ''necessity or self-defense could provide justification that would eliminate any criminal liability.'' The memo made this outlandish claim even though the Convention Against Torture, which Congress ratified in 1994, states very clearly that ''no exceptional circumstances whatsoever'' may be invoked as a justification for torture.

Fourth, the memo states that even if the person inflicting pain knew that severe pain would result from his actions, he would not be guilty of a crime even if he acted without good faith if causing harm was not his primary objective. This analysis defines ''intent'' in a way that defines away any instances of torture. This is one of the serious errors in the Bybee-Gonzales memo that was contradicted in the new OLC memo of December 30, 2004, which replaced the original memo.

None of these points qualify as a reasonable or ''good faith'' legal argument. The Bybee memorandum defined torture so narrowly that Saddam Hussein's lieutenants could have claimed immunity from prosecution for many of their crimes. Beating you, suffocating you, ripping out your fingernails, burning you with hot irons, suspending you from hooks, putting lighted cigarettes in your ear—none of these categories are specifically prohibited under the Bybee memorandum since none involve near death or organ failure, the specific conditions required by the memo to constitute torture.

As Chairman SPECTER himself said today, the original Bybee-Gonzales memo was ''erroneous in its legal conclusions,'' and its definition of torture ''was not realistic or adequate.''

Nevertheless, Mr. Gonzales allowed it to stand for over 2 years and allowed it to be disseminated to other agencies, such as DOD, where major portions were absorbed verbatim into official policy. And now we know from the Times that it was used in the Justice Department to approve specific extreme methods for the CIA.

Mr. Gonzales also refused to tell us whether the extreme conduct at Guantanamo described in the FBI e-mails is illegal.

This conduct included burning detainees with lighted cigarettes, exposing them to extreme temperatures, giving forcible enemas, holding them in prolonged stress positions in their urine or feces. He explained his refusal to respond by saying to us:

> [W]ere the administration to begin ruling out speculated interrogation practices in public, by virtue of gradually ruling out some practices in response to repeated questions and not ruling out others, we would fairly rapidly provide al-Qaida with a roadmap concerning the interrogation that captured terrorists can expect to face.

That is arrant nonsense. Our laws and treaties, our military field manuals all provide specific and clear guidance on where to draw the line on torture. Mr. Gonzales's failure to condemn these acts of torture only weakens America's standing in the world and sets back our efforts against terrorism.

How can we confirm as the chief law enforcement officer a nominee who is afraid to stand up for the rule of law?

To reach this narrow definition of torture, the authors of the Bybee memorandum relied on totally unrelated Federal statutes that define emergency medical conditions for purposes of providing health benefits. The revision last December of the Bybee memoranda refuted this analysis stating that the statutes relied on ''do not define severe pain even in that very different context . . . and they do not state that death, organ failure, or impairment of bodily function cause 'severe pain.'''

Clearly, the memo's original definition of torture is wrong. If it is applied in other countries, U.S. soldiers and citizens traveling abroad would clearly be at risk.

The Bybee memorandum provisions on executive power are also wholly inconsistent with the separations of power in the Constitution. Article II, section 3 directs the President to ''take Care that the Laws be faithfully executed.'' Yet the Bybee memorandum states that the Federal antitorture statute would be unconstitutional if it ''interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants.''

At a press conference in June 2004, Mr. Gonzales refused to say whether this statement remains ''good law'' for the Bush administration. He would say only that the President ''has not exercised his Commander in Chief override; he has not determined that torture is, in fact, necessary to protect the national security of this country.''

Mr. Gonzales evaded questions on this issue by committee members. To this day, we still do not know whether the President believes he has the power as Commander in Chief to authorize torture. There is no such thing as a Commander in Chief override.

It is certainly not in my copy of the Constitution. It appears to be something that Mr. Gonzales and his colleagues have invented.

Congress has repeatedly passed laws and ratified treaties prohibiting torture and mistreatment of detainees, and the President does not have the power to violate them.

When a nominee claims that such an override exists, or suggests that those who commit torture might be able to invoke the defense of ''necessity'' or ''self-defense'' notwithstanding Congress's categorical prohibition against such a defense, it sends a message that ''anything goes'' to our troops and intelligence officers in the field. To allow such extreme claims to become official U.S. policy for two whole years was reckless and, in my view, disqualifying in any nominee for Attorney General.

Mr. Gonzales has also demonstrated a flagrant disregard for the rule of law in his effort to facilitate the CIA practice of ''ghost detainees.'' The administration has always claimed to be in full compliance with the Geneva Conventions in Iraq. Yet in the spring of 2004, we learned from General Taguba that between six and eight of the prisoners at Abu Ghraib Prison had not been registered as required by Army regulations and were being moved around the prison to avoid detection by the International Committee for the Red Cross. General Taguba described this practice as ''deceptive, contrary to Army doctrine and in violation of international law.''

In September, Army investigators told the Armed Services Committee that at the CIA's direction, as many as 100 detainees at Abu Ghraib had been hidden from the Red Cross and that the CIA had refused requests to cooperate with the military investigation. This disclosure drew outrage from both Democrats and Republicans. Senator McCain said:

> The situation with the CIA ghost soldiers is beginning to look like a bad movie. . . . This needs to be cleared up rather badly.

Since then, we have learned that Mr. Gonzales was a major architect of this policy. On March 19, 2004, the Justice Department provided him with a draft memorandum—the so-called ''Goldsmith Memorandum''—to allow the CIA to ship certain persons out of Iraq. Once again, the memo's first page reads, ''Memorandum for Alberto R. Gonzales, Counsel to the President.'' A separate cover page confirms that the opinion was requested by him. It is hard to imagine a clearer smoking gun.

Article 49 of the Fourth Geneva Convention specifically states:

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country occupied or not, are prohibited, regardless of their motive.

Violations of Article 49 constitute ''grave breaches'' of the Convention and therefore qualify as ''war crimes'' under Federal law.

In spite of the clear, unequivocal language of this provision, the Justice Department ruled that Article 49 does not in fact prohibit, for the purpose of ''facilitating interrogation,'' the temporary removal from Iraq of ''protected persons'' who have not been accused of a crime. Scott Silliman, an expert in military law at Duke University, observed that the Goldsmith memorandum:

> Seeks to create a legal regime justifying conduct that the international community

clearly considers in violation of international law and the Convention.

Although the memo was labeled ''draft,'' it was put into action. In October 2004, the Washington Post reported that one intelligence official familiar with the operation said the CIA used the memo:

As legal support for secretly transporting as many as a dozen detainees out of Iraq in the last six months. The agency has concealed the detainees from the International Committee of the Red Cross and other authorities, the official said.

The legal analysis in the Goldsmith Memorandum is preposterous. Yet it appears to have provided a legal justification for the CIA to commit war crimes. As with the Bybee Memorandum, Mr. Gonzales has categorically refused to answer the Senate's questions about his involvement.

He refuses to provide or even conduct a search for documents relating to his request for the Goldsmith Memorandum.

He refuses to say anything about his discussions with the author of the memo.

He says he does not know whether the CIA acted on the memo, as the Washington Post reported.

He even says that he has never had the ''occasion to come to definitive views'' about the analysis in the memo.

Far from helping to clear the air, Mr. Gonzales has clouded it further. To let his nomination proceed would make a mockery of the notion of congressional oversight and accountability.

There are many other issues in Mr. Gonzales's record that should give Members of the Senate pause.

As predicted by Secretary Powell and senior military lawyers, Mr. Gonzales's memorandum of January 2002 on the applicability of the Geneva Conventions to the war in Afghanistan brought a strong negative reaction from even our closest allies and lowered the bar for the protection of our own troops.

According to the Schlesinger report, in September 2003 military commanders in Iraq cited this memo as legal justification for the use of extreme interrogation techniques at Abu Ghraib prison. The worst abuses there occurred from September to December 2003.

In his answers to the committee, Mr. Gonzales made clear that the administration does not consider the CIA to be bound by the prohibition on cruel, inhuman and degrading treatment in Article 16 of the Convention Against Torture. This shift in legal policy was apparently made in a separate Justice Department memorandum which has also not been provided to Congress.

Today, therefore, CIA agents are authorized to treat detainees in a cruel, inhuman, and degrading manner—even if it violates constitutional rules in the U.S.—so long as they do not commit ''torture'' under the Department's narrow definition. President Bush also exempted the CIA from his directive in February 2002 to treat all detainees ''humanely.'' This shameful change in policy obviously endangers the safety of American soldiers who are captured abroad.

Finally, the New York Times reported that Mr. Gonzales excluded important administration personnel from deliberations on the administration's plan to establish military tribunals at Guantanamo, a plan that was widely criticized as unjust, unworkable, and unconstitutional. Secretary of State Powell, National Security Adviser Rice, and the head of the Justice Department's Criminal Division, Michael Chertoff, saw the President's Military Order only after it was published in November 2001. Most of the Pentagon's top military lawyers were also kept in the dark. More than 3 years after the order's publication, not a single detainee at Guantanamo has been successfully prosecuted. To the contrary, as predicted by officials who have expertise in the field, the military tribunal process there is falling apart.

Torture has never before been a Republican versus Democrat issue. Instead, it has always been an issue of broad consensus and ideals, reflecting the fundamental values of the Nation. President Reagan signed the Convention Against Torture in 1988.

President George H.W. Bush and President Clinton supported its ratification in 1994. The Senate Foreign Relations Committee, led by Senator Helms and Senator Pell, voted 10–0 to report the Convention favorably to the full Senate.

I hope that this tradition of bipartisanship and consensus will continue today. I hope that all Members of the Senate will cast their vote in a way that upholds our fundamental values.

A ''no'' vote is the right vote if we care about maintaining America's standing in the world and fighting the war on terrorism. The torture and other abuses of prisoners in Iraq, Afghanistan, and Guantanamo have done immense damage to America's standing in the world. The extreme and irresponsible claims in the Bybee and Goldsmith Memorandums have raised basic questions about the genuineness of our commitment to the rule of law.

It is the right vote for our troops. The administration's shameful disregard for our laws and treaties on torture has lowered the bar for the protection of our own soldiers.

It has violated the military's longstanding ''golden rule'': Treat captured combatants in the manner we expect our own soldiers to be treated. What can Mr. Gonzales possibly say to a country that justifies its torture of a U.S. soldier by citing Mr. Gonzales's own record of support for it?

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is now recognized for 15 minutes.

SOCIAL SECURITY

Mr. NELSON of Florida. Mr. President, I have just returned from a weekend in three different parts of my State and of the State of the Presiding Officer. I was conferring with many of our constituents regarding what is anticipated to be the President's proposal that he will give in his speech tomorrow night regarding Social Security. Of course, this is of enormous importance to us, not only in America but especially in Florida because of the high percentage of our population who are senior citizens. In fact, it is 3 million Floridians, retirees, survivors, and people with disabilities who depend on monthly Social Security benefits.

Social Security provides a guaranteed benefit, and it helps retirees live independently and with dignity. It is also the sole source of income for one-fifth of our Nation's seniors.

In this day and age when you read daily in the newspaper about employer pensions becoming scarce, Social Security provides a lifeline to retirees such as Lucille Solana, a 57-year-old retiree from Davie in Broward County. She worked for United Airlines for nearly 36 years and retired when the company's bankruptcy cut her pay and her office in Miami was closed. She had done what she was supposed to do. She followed the rule of savings: one-third personal savings, one-third corporate pension, and one-third Social Security for her retirement. But it hasn't all gone according to plan. United Airlines is going to terminate her pension, and her personal savings have suffered with the market. About all she has left is her Social Security.

I think we have a moral obligation to help people such as Lucille and our society's elderly citizens.

Social Security also helps us provide financial security to spouses and dependent children if a worker becomes disabled or dies.

Listen to this: 38 percent of all Social Security benefit dollars are paid to disabled Americans. That is 18 million individuals, their spouses, dependent children, and survivors. Without disability benefits, over half of the families with disabled workers would have incomes below the poverty line.

I hasten to add that when we are talking about the spouses and dependent children and survivors, what does the Good Book tell us is one of the highest necessities? It has been told to us in both the Old Testament and the New Testament in Isaiah and James. The widows and the orphans are at the top of our list to be taken care of.

Most families in America know what an important program Social Security is to all Americans. We don't have to convince anyone.

But you also ought to hear the story by Gene and Lynda Christie of Beverly Hills, FL, two of our constituents who are concerned about the President's Social Security plan. They read about his projected plan in the papers. What they read and how it would be calculated, their senior benefits would be cut by $500 a month. They simply can't afford that kind of reduction. I will bet

that some of you would have a difficult time accepting such a cut.

I believe changes to Social Security cannot include cuts to benefits. But that is what privatization would do. That is what the President is expected to propose on Wednesday night as a central part of his plan.

I will oppose diverting money from the Social Security trust fund, but I believe we should do something to keep Social Security solvent just as we have done successfully in the past.

Two decades ago, when I was in the House of Representatives, Social Security faced a real crisis. It truly was on the brink of insolvency. You know what happened. Instead of this approach, ''it is my way or the highway,'' Tip O'Neill and Ronald Reagan got together and they formed a bipartisan commission. On that commission, leadership was given to Senator Bob Dole, to Congressman former Senator Claude Pepper. And the work of that bipartisan commission saved the system and built up the trust fund for the retirement of the baby boomers.

When you put this into context, over the next three-quarters of a century, 75 years into the future, when you compare now with the projected insolvency, lo and behold, we find that the recent tax cuts that have been enacted will cost three times as much as the shortfall that Social Security is projected to face.

According to the Social Security Trustees Report last year, Medicare expenditures are now projected to surpass Social Security spending in 2024. With Medicare expenditures over the next 75 years being far in excess of the shortfall in Social Security, the Medicare deficit will be three times as much as the shortfall in Social Security. Based on these numbers, it is clear that a more real crisis lies in the exploding health care costs.

Privatization will not fix Social Security. In fact, it will actually worsen the country's overall fiscal health. When money is taken out of Social Security to pay for private investment accounts, you won't have enough to pay for current beneficiaries.

Some have suggested that the Government should borrow $2 trillion to plug this hole.

I just came from the Budget Committee. When we are facing upwards of $430 billion and more in deficits in this particular year, and you take another $2 trillion over the next 10 years and add it to it, that would swell the Federal debt and increase our dependence on foreign creditors such as the banks in Japan and China.

Rather than cut the benefits or borrow trillions of dollars, I believe we should pursue other ways to help Americans supplement Social Security and save for their retirement.

Social Security was intended to be a social safety net. Social Security was not intended and never was meant to be an investment program. By linking benefits to the volatile stock prices, privatization shifts the risk to seniors and it weakens Social Security's guaranteed safety net.

Look at the wake of cases recently of corporate wrongdoing. We all know too well the dangers of relying on the stock market for retirement. Just listen to Michael Pesho of Sanford, FL, who wrote to me this December. He says:

Dear Senator, I am a 56-year-old who had to work since the age of 14. I lost both my parents when I was 16, and I have had to provide for myself all these years. I am also a victim of the WorldCom fiasco.

I was laid off at WorldCom and lost my entire retirement portfolio when it was converted into worthless WorldCom stock. I'm tired and would very much like to retire in 9 or 10 years but in order for me to do that Social Security will have to be in place for me to have any kind of retirement foundation to work off of.

He says:

I implore you to ensure Social Security benefits will be there when I need them.

Michael doesn't want his Social Security entrusted to the same market that devastated his retirement savings. It is too risky.

I intend to fight for people who worked hard and played by the rules. I will fight against cuts to Social Security benefits. I will fight against any plan that relies on massive borrowing and increases in debt. I take the fiscally conservative position and I will fight to protect this program that provides a safe and reliable source of retirement income for millions of Americans. I intend to work with the President, not to cut, but to strengthen Social Security. I agree with him that we have a moral obligation to fix it for future generations.

Currently, I am working with other Members of the Senate to put together a moderate and more sensible plan that strengthens Social Security and expands opportunities for all Americans to save for their retirement. This plan would give workers additional tax breaks to save for retirement on their own with a personal account over and above Social Security.

Now is the time to reach out and to bring the various factions together. Now is the time to be conciliators and in the spirit of Ronald Reagan and ''Tip'' O'Neill who saved the Social Security system in a bipartisan fashion back in the early 1980s. We need to bring the factions together. We need to build mutual consent on how to protect Social Security for the retirees of today and future generations. I am very hopeful this can be achieved.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the time until 8:15 this evening be equally divided for debate between the chairman and ranking member or their designees; provided further that the Senate then resume consideration of the nomination at 9:30 a.m. tomorrow, with the time until 4:30 again being equally divided as previously mentioned; provided that the further hour be under the control of the majority and that every 60 minutes alternate. Further, I ask that from 2:30 to 4:30 be under the control of the minority, with 4 o'clock to 4:30 under the control of the majority. I further ask consent that when the Senate convenes on Thursday morning, immediately following the time for the two leaders, there be a period of morning business for 2 hours, with the first hour under the control of the Democratic leader or his designee and the second hour under the control of the majority leader or his designee. I further ask consent that following the morning business time, the Senate resume consideration of the Gonzales nomination and there be an additional 8 hours of debate equally divided again between the chairman and ranking member or designees. Finally, I ask consent that following the use or yielding back of time the Senate proceed with a vote on the confirmation of the nomination with no intervening action or debate, and that following the vote the President be immediately notified of the Senate's action.

Mr. DURBIN. Reserving the right to object, if I could suggest to the chairman, Senator SPECTER, I think he misspoke on one line. I believe in the consent which we are considering it says that ''further, I ask that from 2:30 to 4 o'clock be under the control of the minority and 4 to 4:30 under the control of the majority.'' If that is the way his version reads, I would like to amend his statement.

Mr. SPECTER. 2:30 to 4 under the control of the minority and 4 to 4:30 under the control of the majority? That is acceptable.

Mr. DURBIN. I have no objection.

Mr. DAYTON. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. I ask the chairman, does he intend, then, to proceed now, and is it the understanding that this side will have the next speaker, and I will follow that individual?

Mr. SPECTER. Mr. President, it is my intention to speak next in rebuttal.

Mr. DURBIN. If I might ask through the Chair, I advise my colleague from Minnesota I will make a unanimous consent request about the lineup for Democratic speakers. He will be the first on our side.

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

Mr. DURBIN. Mr. President, I ask unanimous consent the order of speakers on the Democratic side for today be as follows: Senator DAYTON of Minnesota, Senator STABENOW of Michigan, and Senator JOHNSON of South Dakota.

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

Mr. SPECTER. Mr. President, reserving the right to object, and I do not intend to object, I believe implicit in what the Senator from Illinois said is

that there be an alternating of speakers, and I will present a list of Republican speakers to integrate with what Senator DURBIN has stated.

Mr. DURBIN. Mr. President, both implicit and explicit.

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

Mr. SPECTER. Mr. President, today we have heard quite a ring of castigation against Judge Gonzales, virtually all of it misdirected, virtually all of it factually incorrect. We have heard the Senator from Massachusetts castigate the Bybee memorandum in torrid prose, claiming the Bybee memorandum was exactly wrong. He asserted that the Bybee memorandum did not have a sensible interpretation, or a legal interpretation of torture. He further claimed that the Bybee memorandum vastly overstated executive authority, and that it said the President had as much authority on the question of detainees as he did on battlefield control. These claims are palpably erroneous.

The Senator from Massachusetts then cited the Goldsmith memo, and said it certainly was a smoking gun. But Judge Gonzales did not hold that gun, did not have anything to do with that gun. The Senator from Massachusetts said Judge Gonzales was sent a copy of that memorandum. During the course of Judge Gonzales's questioning by the Senator from Massachusetts, the Senator from Massachusetts never once, to my recollection, ever viewed the transcript, or said anything about the Goldsmith memorandum.

So what we have is the castigation of Judge Gonzales for matters which were totally beyond his control. Judge Gonzales was the lawyer for the President as White House Counsel. As such, he sat in on a series of meetings. Those meetings were convened to find out what was the law on how detainees could be appropriately questioned to avoid any implication of the torture statute. When there is a determination of what the law is, that is up to the Department of Justice. And that is what Judge Gonzales testified to. And while there appears to be instances in which the Bybee memorandum was off-base, Judge Gonzales was not involved with the drafting of that memorandum.

Then when the question comes up as to what questions the detainees were going to be asked, that is a matter for the experts. As Judge Gonzales responded to questions from the Senator from Massachusetts at the hearing, it is up to the CIA and up to the Department of Defense. It is not up to the Counsel for the President.

When the Senator from Massachusetts castigates Judge Gonzales for not being able to remember what happened years ago, or what conversations may have taken place, he is being unfairly critical. The Department of Justice was responsible to provide the memo. Whether it was for the CIA or the Department of Defense is something that was not recollected, but who can recollect everything that happened several years ago?

When the Senator from Massachusetts castigates Judge Gonzales for not conducting a search and for not knowing certain information, he is mistaken. A search was conducted.

When the Senator from Massachusetts raised that issue in the executive session, I then asked the White House to conduct a search. That search was conducted, and immediately a memorandum was circulated disclosing what that search was.

When the Senator from Massachusetts, last night—I got it this morning—asked for some more information from the White House, I again forwarded the request and got a reply today. It was not a reply that the Senator from Massachusetts liked, but there has been nothing about this entire proceeding that the Senator from Massachusetts has agreed with. And that is his prerogative. He does not have to agree with it. He does not have to vote for Judge Gonzales. And he can express his views on oversight responsibilities. But there are others of us on this committee who have been here a while who understand our oversight responsibility and who have made a very strong effort to provide the information which the Senator from Massachusetts has asked for.

Judge Gonzales was available to more than a dozen Members of the Senate, available to all members of the Judiciary Committee—not that all asked to see him—and provided more than 250 pages of voluminous answers. So extensive were the answers that they were complimented, in effect, by the New York Times, saying it was the most comprehensive statement made as to what was the policy of the U.S. Government on these very important subjects.

But aside from the rhetoric, what are the facts? What does the testimony show? What do the documents show?

Senator FEINSTEIN says she still does not understand what Judge Gonzales thinks about torture. Well, what Judge Gonzales thinks about torture he has said on quite a number of occasions.

Let me remind all Senators who have to vote on this matter what Judge Gonzales said about torture.

No. 1:

[T]he President has said we're not going to engage in torture.

No. 2:

The President gave a directive to the military that despite the fact that Geneva may not apply with respect to the conflict and the war on terrorism, it is that everyone should be treated humanely.

No. 3, this is in the record, according to his testimony:

[T]he position of the President on torture is very, very clear, and there is a clear record of this. He does not believe in torture, condone torture, has never ordered torture, and anyone engaged in conduct that constitutes torture is going to be held accountable.

No. 4:

All I know is that the President has said we are not going to [have] torture under any circumstances. . . . the United States has never had a policy of torture.

No. 5, further testimony:

Our policy is we do not engage in torture.

No. 6:

It is not the policy of the administration to tolerate torture or inhumane conduct toward any person that the United States is detaining.

No. 7, more testimony:

The President is not going to order torture.

No. 8:

[T]his President is not going to order torture. We don't condone it.

No. 9:

Now, let me emphasize, and I can't emphasize this strongly enough, there are certain basic values that this country stands for and this President certainly believes in, and those values are reflected in the directives that he has issued regarding the treatment of al Qaeda detainees, and those who do not meet those standards are going to be held accountable.

This is all testimony or responses in the Record:

In addition, there are of course other legal restrictions. For example, the convention against torture, that would be applicable, Army regulations that would be applicable. All those exist to conscript the type of conduct that our military can engage in with respect to detainees. And so we want to of course meet basic standards of conduct with respect to treatment of al Qaeda[.]

No. 10, again, testimony:

[A]s I have said repeatedly today, this administration does not engage in torture and will not condone torture. And so what we are really discussing is a hypothetical situation. . . .

No. 11:

[O]ther than the directive by the President that we're not going to engage in torture and that we're going to abide by our legal obligations, I'm not aware of any other directive by the President.

No. 12: Judge Gonzales also reiterated his own opposition to torture in numerous responses to written questions submitted by Judiciary Committee Senators following the hearing.

No. 13:

The President has repeatedly stated that his Administration does not authorize or condone torture under any circumstances by U.S. personnel. I, of course, fully support the President's policy. . . .

No. 14:

I do denounce torture, and if confirmed as Attorney General, I will prosecute those who engage in torture.

No. 15:

The President has made clear that the United States remains committed to adhering to its obligations under the Geneva Conventions and the Convention Against Torture and has unequivocally condemned torture. I have repeatedly emphasized the President's statement of these commitments on behalf of the United States, and will continue to do so if confirmed as Attorney General.

As chairman of the committee, I had the first round of questions, and the first question I asked Judge Gonzales

was: What is your position on torture? And his words were to the effect: I condemn torture. Now, I do not know how much more explicit a witness, a nominee, can be than Judge Gonzales has been, but if someone does not understand Judge Gonzales's position after this kind of an emphatic, definitive statement, it is plain and clear for the record.

The contention has been made that Judge Gonzales agrees with a Bybee memorandum's conclusion that severe pain, for purposes of the torture statute, must be equivalent in intensity to the pain accompanying organ failure, impairment of bodily function, or even death. This has been a source of contention throughout the hearings in the executive session and on the Senate floor. Judge Gonzales responded to the ranking member, who said:

Do you agree today that for an act to violate the torture statute it must be equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function or even death?

Judge Gonzales answered:

I do not. That does not represent the position of the Executive Branch.

So Judge Gonzales categorically repudiated the Bybee memorandum in that respect.

There has been a source of argument about what the Bybee memorandum meant and what Judge Gonzales's position was about it. Judge Gonzales was deferential to the determinations by the Department of Justice. There is a complicated issue here as to whether the White House is going to be overly determinative in what the Department of Justice's position should be, and the White House has been very cautious. This is traditional—not just with this White House but with prior White Houses—not to tell the Department of Justice what to say or not to appear to tell the Department of Justice what to say because that would be politicization of a Department of Justice by the White House. The White House's role, as we have emphasized it, is not to tell the Department of Justice what to do, and the Department of Justice and the Attorney General's role is to represent all of the American people and not just the President.

There was discussion between the White House and the Department of Justice, as well as other agencies, about what the torture statute meant. Judge Gonzales testified to that and said, in effect, that it would be natural to have those kinds of discussions. Judge Gonzales said:

It was very, very difficult. I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department. Ultimately, it is the responsibility of the Department to tell us what the law means, Senator.

In the very next question, however, we clarified his views on the narrow definition of torture in the Bybee memo. The ranking member asked:

Do you agree today that for an act to violate the torture statute it must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death?

And as noted previously, Judge Gonzales said he did not. Later, in another response to the ranking member, Judge Gonzales agreed that it would be horrific conduct—I think you would agree to this, and Judge Gonzales did, to what Senator LEAHY asked—that cutting off someone's finger would be considered torture.

Judge Gonzales also explained his agreement with the conclusion of the Justice Department based on respect for the Department's independence. This is what Judge Gonzales had to say on that facet of the issue:

Senator, what you're asking the counsel to do is to interject himself and direct the Department of Justice, who is supposed to be free of any kind of political influence, in reaching a legal interpretation of a law passed by Congress. I certainly give my views. There was of course conversation and a give and take discussion about what does the law mean, but ultimately, ultimately by statute the Department of Justice is charged by Congress to provide legal advice on behalf of the President.

Well, it is apparent from the totality of the context of what Judge Gonzales had to say that aside from giving deference to the role of the Department of Justice in interpreting the law, the Bybee memo was not accepted by Judge Gonzales.

When it came to the critical question of the assertion in the Bybee memorandum that the President had as much authority on the questioning of detainees as the President had on battlefield decisions, Judge Gonzales said he disagreed with that. When the question came up about the scope of the President's authority to immunize people who would violate Federal law, of course, any suggestion in the Bybee memo or otherwise would be contrary to a basic understanding of the law of the United States, where nobody is above the law.

At his confirmation hearing, Judge Gonzales specifically rejected the portion of the August 1, 2002, Bybee memorandum, which asserted that the President, as Commander in Chief, possessed the constitutional authority in certain circumstances to disregard the Federal criminal prohibition against torture. He stated that the memo has been ''withdrawn.''

It has been rejected, including that section regarding the Commander in Chief's authority to ignore the criminal statutes. So it has been rejected by the Executive Branch. I, categorically, reject it . . . [T]his administration does not engage in torture and will not condone torture.

A question was raised about a reservation to the Convention Against Torture under article 16, which provided that aliens interrogated by U.S. personnel outside of the United States did not enjoy the substantive rights of the 5th, 8th and 14th amendments, a technical reservation for international law purposes.

Judge Gonzales responded that this is a legislative issue that may perhaps require additional consideration. Nevertheless, regardless of the debate about the strict requirements of article 16, Judge Gonzales testified that the administration had sought to be in compliance as a substantive matter under the 5th and 18th amendments. He also testified that to the best of his knowledge, the U.S. has met its obligations under the 5th, 8th, and 14th amendments.

A major question was raised about Judge Gonzales's independence. He was emphatic, saying that:

If confirmed, I will no longer represent only the White House. I will represent the United States of America and its people. I understand the difference between the two roles. In the former, I have been privileged to advise the President and the staff. In the latter, I would have a far broader responsibility to pursue justice for all the people of our great nation, to see that the laws are enforced in a fair and impartial manner for all Americans.

Both Senator LEAHY and I, in our opening statements, emphasized this issue, and this was a matter which Judge Gonzales had thought about and had included in his opening statement and was prepared to affirm the very fundamental difference in his duty as Attorney General to the American people, contrasted with his responsibilities as White House Counsel to the President.

We have seen a rather dramatic turnabout in the course of the hearings on Judge Gonzales, the issue of the esteem in which he had been held and what Senators had to say about him and what they have said about him since in executive session.

Senator KOHL had this to say about Judge Gonzales:

We have had an opportunity to work together on several different issues over the years, and I have come to respect you. And I believe if you are confirmed, you will do a good job as Attorney General of the United States.

Senator DURBIN said:

I respect him and his life story very much.

Senator LEAHY said:

When this nomination was first announced, I was hopeful. I noted at the time that I like and respect Judge Gonzales.

Senator SCHUMER said:

I like Judge Gonzales. I respect him. I think he is a gentleman and I think he is a genuinely good man. We have worked very well together, especially when it comes to filling the vacancies on New York's Federal bench. He has been straightforward with me and he has been open to compromise. Our interactions haven't just been cordial; they have been pleasant. I have enjoyed the give-and-take we have engaged in.

Senator SCHUMER later said:

I was inclined to support Judge Gonzales. I believed, and I stated publicly early on, that Judge Gonzales was a much less polarizing figure than Senator Ashcroft had been. . . . Even if you are, as Judge Gonzales is, a good man, a good person with top-notch legal qualifications, you must still have the independence necessary to be the Nation's chief law enforcement officer.

He continues:

I still have great respect for Judge Gonzales. He has the kind of Horatio Alger story that makes us all proud to be Americans. It is an amazing country when a man can rise from such humble beginnings to be nominated for Attorney General.

So the question arises, as we are engaging in floor debate on the nomination of Judge Gonzales to be Attorney General of the United States, what happened here? We know of the atrocities of Abu Ghraib, and although there have been some efforts in some of the speeches to identify Judge Gonzales with Abu Ghraib, they are not substantial. There have been some criticisms regarding Guantanamo. Those matters are under investigation. But Judge Gonzales is not the interrogator; he is not the questioner; he is not the person who made up the questions; he is not the person who has defined the torture statute. He has been one individual in a series of meetings, where his role has been defined as being the representative of the President.

But the role of the Department of Justice is clearly delineated. They are to interpret what the statutes mean. The experts in the CIA and in the Department of Defense have their own responsibilities.

So what is happening here? Is it the constant Washington search for political advantage that goes around this town every day? During the course of our discussion on Judge Gonzales, we heard a speech about Social Security. It surprised me a little, in the middle of the proceedings. We have questions on political advantage on so many subjects that I am not going to digress. But there is no doubt that the air is very heavy with politics in this town.

We had the nomination proceedings as to Secretary of State Condoleezza Rice. She was challenged in a way that was highly unusual in the Senate of the United States—challenged as to her integrity. Not was she wrong about weapons of mass destruction, but did she falsify, was her testimony deliberately false and misleading. Dr. Rice had more negative votes than any nominee for Secretary of State since John Jay in 1824. That says something about the atmosphere in Washington and the constant Washington search for political advantage.

Senator SCHUMER has raised a contention repeatedly in the course of the proceedings on Judge Gonzales about the so-called nuclear option. He asked Judge Gonzales for his opinion as to whether the so-called nuclear option is constitutional. That is quite a cloud hanging over the Senator—potentially hanging over the Senate—as to whether the rules of the Senate require only 51 votes on the confirmation of a Federal judge as opposed to the requirement of cloture of 60 votes. Senator SCHUMER has raised that issue. I don't think he is looking for a commitment there as a condition to his vote, so why question Judge Gonzales about that collateral matter that has no bearing on his fitness for the post to which he has been nominated?

So there is some sense on my part that we have found a wedge issue. It is certainly true that Judge Gonzales has not been the most artful of witnesses. To say he has a generalized agreement with the Bybee memorandum was not the most artful of answers, after it had been universally condemned and withdrawn by the Department of Justice. But he made that reference as a theoretical matter as to how the White House respects the Department of Justice's role in interpreting the law so that if the Department of Justice came down with an interpretation, Judge Gonzales was not going to say it was wrong to appear to be having undue influence, or to be politicizing the process. But that wasn't the most artful of answers.

When asked hypothetical questions about was there any circumstance where the President of the United States might not follow a statute, again, it wasn't the most artful of answers. There is no doubt that Abu Ghraib and Guantanamo and the horrors of torture are overwhelming to the American psyche.

Back in 1991, I introduced legislation to protect victims of torture, to have rights of actions in Federal courts. I spoke out about the torture issue before it became a matter for legislation for the Congress generally. The legislation I introduced in 1991 was adopted, so that people who are subjected to torture in foreign countries can sue in U.S. courts. So the issue of torture has always been on the mind of this Senator. It is on the minds of the American people.

But Judge Gonzales is not responsible for what went on in Abu Ghraib or Guantanamo. Judge Gonzales is not responsible for actions by the CIA, or the Department of Defense, or for legal opinions by the Department of Justice.

If you look at his record and his qualifications as a lawyer, his academic qualifications as a Harvard Law graduate, his qualifications for practicing law with a big firm, his qualifications for being a supreme court justice in Texas, his qualifications for being White House Counsel for 4 years, where Judge Gonzales has had contact with many Senators—I dare say in that capacity, my colleagues in the Senate would share my views that he was always courteous, always relevant, always on top of the issues in discussing judicial nominees, where most of us have had some role to confirm a judge in his or her State. I think the comments would be uniform, as the ones I quoted, about how pleasant it was and how effective it was and how professional it was to deal with Judge Gonzales.

So if the winds of Abu Ghraib and Guantanamo had not blown across this hearing, I think we would have had perhaps a unanimous vote in favor of Judge Gonzales. In this highly charged political atmosphere, one has to wonder whether he is not, himself, a torture victim. He is clearly a victim of Washington politics.

Judge Gonzales is still highly likely to be confirmed. He was voted out of committee on a party-line vote. It had been my hope and expectation at an earlier stage that it would have been a strong bipartisan vote. It is still my hope and expectation he will be confirmed with some bipartisanship, but it will not be the kind of strong vote that would have given him a much stronger position as Attorney General absent the Bybee memo, Abu Ghraib, and Guantanamo. But on the basis of his academic, professional, and public service record, there was much, and still is much, on which to recommend him to be the Attorney General of the United States.

Mr. President, I have taken some more time. I made a very short opening statement to begin debate today and have listened to the arguments made by Senators from the other side of the aisle and find factually that they are off the mark; that in terms of what Judge Gonzales has had to say out of his own mouth have come very forceful denunciations of torture, very forceful denunciations of the Bybee memorandum, and a strong statement as to why he ought to be the next Attorney General of the United States.

Mr. President, I ask unanimous consent that the following list be next in order of Republican speakers: Senator COBURN, Senator SESSIONS, Senator BROWNBACK. Before the Chair rules, I will add that we will continue to alternate between Republican and Democratic speakers.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SPECTER. I wanted to put this on the record so the people who are next up would know it, and would be in a position to come to the Chamber in a timely fashion.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I highly respect the distinguished chairman of the Senate Judiciary Committee. He has been noted with his own stellar examples of bipartisanship, working with colleagues on both sides of the aisle. But I must say I have to respond to his remarks about those of us who oppose Judge Gonzales as being engaged in nothing other than political partisanship. I suggest that term could be applied to those who support these nominees because they are of the same political party as the President as much as they could be applied to those of us who are on the other side of the aisle.

If the Founders of this country did not intend for the Senate to exercise an independent judgment about the nominees to these high offices, such as Attorney General and Secretary of State, they would not have provided for a separate Senate confirmation of the President's nominees.

These individuals are not employees of the President, even though they are

nominated by him and serve as members of his Cabinet and serve at his pleasure, as are his employees in the White House, who are not subject to Senate confirmation. These men and women become public officials who represent the United States of America within our country, before the Supreme Court, as Secretary of State in the seats of government around the world. They have to meet an American standard, and it is that standard that each of us has the independent responsibility to apply according to our own best judgments, but one the Constitution clearly intends we should apply independent of the President's judgment and independent, one would hope, of our own respective political parties.

I think ultimately, in the light of this debate, it is for the American people to decide whether this nominee, or any of the President's nominees, meet the standards for those who will represent this Nation in the highest public offices in the land.

I rise today to oppose the nomination of Judge Gonzales to be our Nation's next Attorney General, and I cite, as have other colleagues, the key role that he played in what is certainly one of the darkest disclosures about this administration: Its secret decisions to disregard the principles of the Geneva Convention for the humane treatment of prisoners of war who Judge Gonzales and others conveniently renamed ''enemy combatants.''

This role and its consequences were described in graphic detail in a recent Sunday New York Times review of a couple of books, including the International Commission of the Red Cross's documents regarding the abuse of prisoners in Iraq by American service men and women. I would like to quote to some extent from the New York Times report because it expresses both the severe consequences of the decisions that were made in which Judge Gonzales, unfortunately, played a key role as White House Counsel.

The reviewer cites part of the memorandum that the President approved that was written by Judge Gonzales in that role which states:

As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

The article reporter goes on to say:

Notice the qualifications. The president wants to stay not within the letter of the law, but within its broad principles, and in the last resort, ''military necessity'' can overrule all of it. According to his legal counsel at the time, Alberto R. Gonzales, the President's warmaking powers gave him ultimate constitutional authority to ignore any relevant laws in the conduct of the conflict. Sticking to the Geneva Convention was the exclusive prerogative of one man, George W. Bush; and he could, if he wished, make exceptions. As Assistant Attorney General Jay S. Bybee argues in another memo, ''Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional. (Section 2340A refers to the United States law that incorporates the international Convention Against Torture.)

Bybee asserted that the president was within his legal rights to permit his military surrogates to inflict ''cruel, inhuman or degrading'' treatment on prisoners without violating strictures against torture. For an act of abuse to be considered torture, the abuser must be inflicting pain ''of such a high level intensity that the pain is difficult for the subject to endure.'' If the abuser is doing this to get information and not merely for sadistic enjoyment, then ''even if the defendant knows that severe pain will result from his actions,'' he's not guilty of torture. Threatening to kill a prisoner is not torture; ''the threat must indicate that the death is 'imminent.' '' Beating prisoners is not torture either. Bybee argues that a case of kicking an inmate in the stomach with military boots while the prisoner is in a kneeling position does not by itself rise to the level of torture.

Bybee even suggests that full-fledged torture of inmates might be legal because it could be construed as ''self-defense,'' on the grounds that ''the threat of an impending terrorist attack threatens the lives of hundreds if not thousands of American citizens.'' By that reasoning, torture could be justified almost anywhere on the battlefield of the war on terror. Only the president's discretion forbade it. These guidelines were formally repudiated by the administration the week before Gonzales's appearance before the Senate Judiciary Committee for confirmation as attorney general.

In this context, Secretary Rumsfeld's decision to take the gloves off in Guantanamo for six weeks makes more sense. The use of dogs to intimidate prisoners and the use of nudity for humiliation were now allowed. Although abuse was specifically employed in only two cases before Rumsfeld rescinded the order, practical precedents had been set; and the broader mixed message sent from the White House clearly reached commanders in the field. Lt. Gen. Ricardo S. Sanchez, in charge of the Iraq counterinsurgency, also sent out several conflicting memos with regard to the treatment of prisoners—memos that only added to the confusion as to what was permitted and what wasn't. When the general in charge of Guantanamo was sent to Abu Ghraib to help intelligence gathering, the ''migration'' of techniques (the term used in the Pentagon's Schlesinger Report) from those reserved for extreme cases in the leadership of Al Qaeda to thousands of Iraqi civilians, most of whom, according to the intelligence sources, were innocent of any crime at all, was complete. Again, there is no evidence of anyone at a high level directly mandating torture or abuse, except in the two cases at Gitmo. But there is growing evidence recently uncovered by the ACLU . . . that authorities in the FBI and elsewhere were aware of abuses and did little to prevent or stop them.

Then there were the vast loopholes placed in the White House torture memos, the precedents at Guantanamo, the winks and nods from Washington, and the pressure of an Iraqi insurgency that few knew how to restrain. It was a combustible mix.

The article continues:

What's notable about the incidents of torture and abuse is first, their common features, and second, their geographical reach. No one has any reason to believe any longer that these incidents were restricted to one prison near Baghdad. They were everywhere from Guantanamo Bay to Afghanistan, Baghdad, Basra, Ramadi and Tikrit and, for all we know, in any number of hidden jails affecting ''ghost detainees'' kept from the purview of the Red Cross.

I will might add that is in direct contradiction to what we have been told, those of us like myself who sit on the Senate Armed Services Committee, who have been told repeatedly by this administration's representatives, and by military leaders, that these abuses were restricted to one prison, Abu Ghraib, in Iraq. I commend Senator WARNER, the chairman of the Armed Services Committee, who has done his utmost, by holding these hearings and pressing the military and pressing the administration, to bring the full scope of what occurred there to public light through those hearings. To have sat through all those, as I have, and now hear that contradicted directly by the facts as they become known is greatly distressing and confirms my own unfortunately necessary judgment that this administration has not been candid with this Congress or with the American people about the conduct of the war in Iraq in this and other very important respects.

Going back to the New York Times article, they, meaning the abuses of prisoners in Iraq:

were committed by the Marines, the Army, the Military Police, Navy Seals, reservists, Special Forces and on and on. The use of hooding was ubiquitous; the same goes for forced nudity, sexual humiliation and brutal beatings; there are examples of rape and electric shocks. Many of the abuses seem specifically tailored to humiliate Arabs and Muslims, where horror at being exposed in public is a deep cultural artifact.

An e-mail message recovered by Danner from a captain in military intelligence in August 2003. . . . In the message, he asked for advice from other intelligence officers on which illegal techniques work best: a ''wish list'' for interrogators. Then he wrote: ''The gloves are coming off gentlemen regarding these detainees, Col. Boltz has made it clear that we want these individuals broken.''

The article continues:

How do you break these people? According to the I.C.R.C., one prisoner ''alleged that he had been hooded and cuffed with flexicuffs, threatened to be tortured and killed, urinated on, kicked in the head, lower back and groin, force-fed a baseball which was tied into the mouth using a scarf and deprived of sleep for four consecutive days. Interrogators would allegedly take turns ill-treating him. When he said he would complain to the I.C.R.C. he was allegedly beaten more. An I.C.R.C. medical examination revealed hematoma in the lower back, blood in urine, sensory loss in the right hand due to tight handcuffing with flexicuffs, and a broken rib.''

That is only one of several incidents of that kind of horrible abuse this article contains. It continues:

And the damage done was intensified by President Bush's refusal to discipline those who helped make this happen. A president who truly recognized the moral and strategic calamity of this failure would have fired everyone responsible. But the vice president's response to criticism of the defense secretary in the wake of Abu Ghraib was to say, ''Get off his back.'' In fact, those with real

responsibility for the disaster were rewarded. Rumsfeld was kept on for the second term, while the man who warned against ignoring the Geneva Conventions, Colin Powell, was seemingly nudged out. The man who wrote a legal opinion maximizing the kind of brutal treatment that the United States could legally defend, Jay S. Bybee, was subsequently rewarded with a nomination to a federal Court of Appeals. General Sanchez and Gen. John P. Abizaid remain in their posts. Alberto R. Gonzales, who wrote memos that validated the decision to grant Geneva status to inmates solely at the president's discretion, is now nominated to the highest law enforcement job in the country: attorney general. The man who paved the way for the torture of prisoners is to be entrusted with safeguarding the civil rights of Americans. It is astonishing he has been nominated, and even more astonishing that he will almost certainly be confirmed.

I conclude my citation of that article. The abuses it describes are terrible, however limited in number they may be. Obviously almost all of our American service men and women serving so heroically in Iraq, Afghanistan, and around the world were not involved in those abuses. In fact, they paid the price for them. They become the targets of relatives and friends of those abuse victims who swear revenge. Our troops are placed at greater risk if, God forbid, they are captured, because we cannot demand that their captors practice standards of humane treatment which we do not practice ourselves.

But there is something that runs even deeper here and that is even more dangerous to our democracy. It is Judge Gonzales's advice that ''the President's warmaking powers gave him ultimate constitutional authority to ignore any relevant law in the conduct of the conflict.''

This is, I suspect, only the tip of the iceberg. Early in the administration's campaign, in the fall of 2002, to stampede Congress and scare the American people into the Iraq war, the White House stated their legal view that the President didn't actually need congressional authorization to invade Iraq. Members of this body on the other side of the aisle were instrumental in persuading him nevertheless to seek that authority.

Secretary Rumsfeld's legal advisers have reportedly reinterpreted existing law to permit him to set up his own CIA-type operations without informing Congress. They reinterpreted another law, purportedly to authorize military counterterrorist commando units to operate within the United States. Who knows how many other laws this administration's legal advisers have reinterpreted or decided that the President or others can ignore entirely, reinterpret or ignore without informing Congress, without informing the American people?

The Attorney General of the United States is entrusted to uphold the laws of this Nation and to apply them consistently and fairly to every American citizen, whether he agrees with them, whether they are convenient, whether the President or anyone else tells him otherwise. He cannot reinterpret them or ignore them or instruct the President or anyone else that they can reinterpret or ignore them. Change them? Yes, through the public process prescribed by the Constitution, by our Constitution: by an act of Congress signed into law by the President himself, reviewed if necessary by the judiciary. No exclusions and no exceptions, not for this President or any President; not for this administration or any administration, whether Republican, Democrat, or anything else. There are no special circumstances. There is no election mandate for secretly ignoring or reinterpreting laws of this Nation, or acting contrary to the rule of those laws or in violation of the Constitution of the United States.

Unfortunately, there is tragic precedent in this country's proud history for the demise of administrations who deviated from the rule of law, who considered themselves above the law or beyond the law or justified in reinterpreting or ignoring the law. Their hubris did great damage to themselves and they did great damage to our country.

They occurred more often than not during second terms, even after receiving that most special of electoral mandates: reelection. What a profound affirmation of the public trust, the most sacred political trust we have in this country: reelection of the President of the United States of America.

For the next 4 years, this President is our President. He is my President. I pray that he succeeds. Where he succeeds, our country succeeds. If he fulfills that sacred trust inferred upon him by the American people, the faith of all Americans in their Government is fulfilled.

We can have policy disagreements here in the Senate, in the House of Representatives, and with the administration. This is what a great Democratic leader, Senator Tom Daschle, called the ''noise of democracy.'' They were intended by this country's Founders, who designed our system of government to allow them, to address them, and resolve them, publicly, lawfully, and constitutionally. When those principles are followed publicly, lawfully and constitutionally, our Nation is strengthened. When they are not, our Nation is almost always weakened, regardless of what those leaders intended at the time.

I respectfully urge this administration to stop reinterpreting and ignoring existing laws and to stop ignoring and misleading Congress and the American people and to nominate an Attorney General who will not advise it, not hide it, and not condone it. That Attorney General I will gladly vote to confirm; this nominee, I will not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I am struck as a newly-elected Senator from the State of Oklahoma. I must say I am extremely disappointed that my first opportunity to speak on the floor of this body is on the basis to refute the claims that are being made against a gentleman that I believe has already served our country miraculously and has been an example in this country of what can happen from very humble beginnings if somebody applies hard work, great effort, and perseverance.

I am also struck by the claims that are made which don't have anything to do with history.

I was sitting here asking myself this question: Were President Kennedy, President Johnson, and President Nixon responsible for My Lai, Vietnam? Was it their policies that caused that to happen? The atrocities that occurred during the Korean conflict, was that the fault of President Truman? The atrocities that occurred during World War II, was that the fault of President Roosevelt? No.

And to make the reach and to make the claim that Alberto Gonzales, in his role as adviser to the President, as a legal counsel, to do what is expected of him in that position and to do that in a way that gives the President of the United States the advice, the knowledge, and the legal opinion of the Justice Department—not his opinion but the legal opinion of the Justice Department—that he somehow has disqualified himself from the position of Attorney General.

I come to the floor today to make a statement in support of Alberto Gonzales's nomination to be the Attorney General of the United States. I believe an injustice is being carried out against him, both personally and professionally. Instead of looking at his qualifications, many have used him as a lightning rod for their complaints about the administration's handling of the war on terror. Specifically, many blame him for the administration's policies on the treatment of detainees and for its inquiries about the definition of torture. I am reminded that the President stated in 2002 that we would offer humane treatment to all prisoners. I am also reminded of how important it was for him to have a definition of what that was according to the Geneva Convention, but also according to our own law.

What have the President and Judge Gonzales done to deserve the criticism they received? We saw Monday the results of Sunday's elections in Iraq.

The allegations against him are based on two sets of advice that were given to the administration by the Attorney General and Department of Justice.

First, the President made a decision based on the legal advice that he received from the Attorney General and the Department of Justice that certain detainees should not receive prisoner-of-war status while they were held in U.S. custody.

Second, Judge Gonzales asked the Department of Justice Office of Legal Counsel under its statutory authority

to render legal opinions to determine the precise meaning of the U.S. anti-torture statute. The Department of Justice responded to this request August 1, 2002, and December 30, 2004.

I must say that torture is not a pleasant subject for us to discuss, but one might ask why the President and his top lawyer needed a clarification on an issue as unsettling as torture. I believe it is good to repeat the words of Senator CORNYN in his discussion. Why would we not use every legal means which are appropriate to protect this country? Finding out the definition of appropriateness is well within the purview of what Alberto Gonzales did.

It is remarkable how quickly we forget. Just 3 years, 4 months, and 21 days ago, this Nation came under attack. We all watched helplessly as more than 3,000 of our fellow Americans were murdered, and nearly an equal number were severely injured in an assault that we had never seen before in this country.

As the horrors of September 11, 2001, unfolded before our eyes, we quickly realized that we were not under the attack of another country, we were not assaulted by a nation that respects and obeys the laws of war and international order. We were ripped from a world paradigm that we understood, one where states follow rules while fighting each other, and thrust into a new world where a nonstate enemy infiltrates society and targets our citizens. Our enemy does not acknowledge that while at war soldiers must wear uniforms, carry their weapons openly, obey a chain of command, and treat captives—especially civilian captives—humanely. What they do is cut their heads off. They don't hide the fact.

The nightmare that began on September 11 has not ended. We watch daily as our enemy attacks our soldiers who are risking their lives and limbs to better the lives of the citizens of Iraq and Afghanistan and drive out terrorist cells. Gone are days when our soldiers were able to face the enemy on the battlefields, eye-to-eye. Today, enemy combatants launch surprise attacks by hiding among civilians and behind the bodies of the wounded. Gone are the days when combatants understood how important it was to protect civilians from harm. Enemy combatants today brutally and repeatedly behead innocent civilians.

As our leaders first faced the aftermath of September 11, a dark reality set in: Our enemy would not play by the rules that civilized people and nations have developed over the course of history. Our leaders needed to understand exactly what our laws required and what we needed to do to survive in this new world we faced. They needed to make strong policy decisions based on our country's domestic laws and international obligations.

First, our leaders needed to understand who we were fighting. Under customary international law, civilians are not allowed to engage in combat. Because soldiers are not supposed to target civilians in battle, it is essential that civilians are distinguishable from combatants. If civilians wish to be protected from harm, they must look different than combatants; therefore, every person who wishes to engage in combat and if captured receive the protections accorded to prisoners of war by the Third Geneva Convention, they must fulfill four conditions: that of being commanded by a person responsible for his subordinates; that of having a fixed distinctive sign recognizable at a distance; that of carrying arms openly; and that of conducting their operations in accordance with the laws and customs of war. We saw none of that.

If someone engaged in combat does not follow these rules, he or she is an illegal combatant. Illegal combatants have long been recognized by state practice in the law of war field. In Ex parte Quirin, the U.S. Supreme Court held that ''by universal agreement and practice the law draws a distinction between the Armed Forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants.''

Furthermore, the state practice of the United States does not evidence any understanding of a customary international law norm extending the Geneva Convention and prisoner-of-war treatment to combatants who commit terrorist acts. Instead, international law regards such individuals as illegal combatants who cannot claim the protection of the laws of war that extend to legal combatants.

Only lawful combatants, members of fighting units who comply, again, with the four conditions—being commanded by a person responsible for subordinates; having a fixed distinctive sign, recognizable at a distance; carrying arms openly; and conducting their operations in accordance with the laws and customs of war—are license to engage in military hostilities. Only those who comply with these four conditions are entitled to the protections afforded to captured prisoners of war under the laws and usages of war.

In fact, the denial of protected status under the laws of war has been recognized as an effective method of encouraging combatants to comply.

As we hear those opine about what has gone on, I ask the American people to think about it. Who are these people who are killing our soldiers? Who are these people who are blowing people up? Who are they? They meet none of the criterion for a legal combatant.

How has the President applied these principles to the War on Terror? In the February 7, 2002, Order on the Humane Treatment of al-Qaida and Taliban Detainees, President Bush stated unequivocally that all detainees are to be treated humanely, ''including those who are not legally entitled to such treatment.'' Therefore, even though many of the fighters our soldiers encounter are not entitled to prisoner-of-war treatment, they are still being treated humanely.

Furthermore, the President has unequivocally stated the Third Geneva Convention applies to detainees captured in Iraq. Even those Iraqi prisoners who do not meet the four requirements to receive POW status are subject to an appearance before a Third Geneva Convention Article 5 tribunal to determine their status. Prior to that, they must receive POW protection until their status is determined.

Second, while the President agrees with the Department of Justice that he has the authority under the Constitution to suspend Geneva, as between the United States and Afghanistan, he has declined to do so and has stated that the provisions of Geneva apply to our present conflict with the Taliban. However, common Article 3 of Geneva, and article 4, POW status, do not apply to the Taliban because they are unlawful combatants.

Finally, none of the provisions of Geneva apply to the conflict with al-Qaida in Afghanistan or elsewhere. Al-Qaida detainees are not prisoners of war but are unlawful combatants.

Next, the administration officials acknowledge that there could be circumstances where detainees hold information that could literally be a matter of life or death for thousands or even millions of American citizens. Judge Gonzales needed to understand what we are allowed to do under the laws of our Nation to save the lives of our people. Therefore, Judge Gonzales sought the legal expertise of the Department of Justice—not his opinion, but the Department of Justice's opinion—to understand the definition and meaning of torture in the United States anti-torture statute.

This request by Judge Gonzales did not in any way indicate the desire of the administration to use torture. It is a far reach to claim it. As a matter of fact, it is absolutely untrue to claim it. In fact, the official position of the administration is that neither torture nor inhumane treatment are to be used against anyone by the United States regardless of whether they have prisoner-of-war status or not. Because the administration's position is so strong, it was critical that the President and his advisers fully understand what constitutes torture so that no lines would be crossed.

What does all this mean? Members of the Taliban and al-Qaida detainees do not receive the luxuries afforded prisoners of war because they are unlawful combatants. Iraqi fighters, even if they are terrorists, and most are, receive prisoner-of-war status until they receive a hearing before an article 5 tribunal to determine their status. None of these detainees are to be tortured or otherwise treated inconsistently with U.S. constitutional principles.

It would have been irresponsible for Judge Gonzales to have not sought to understand the legal rights of enemy combatants and the law. He had a duty

to the President and to the United States to understand these concepts and pass those on to the President in his private executive position as legal counsel to the President.

We all went to sleep in a different world on September 11, 2001, very different than the one we lived in the night before. Our leaders needed to understand our domestic and international obligations well to respond to the new needs of our country. Alberto Gonzales should not be faulted for doing his duty for his client, the President of the United States. He is well qualified to serve as a U.S. Attorney General, and he should be confirmed.

I also conclude by saying the following: In late November, I came to Washington to go through a process of orientation as a new Senator in this body. The message I heard from the other side of the aisle is, We want cooperation. We want bipartisanship. We do not want to politicize. The opposite of that is happening at this very moment in this body. Here is a good man who has demonstrated tremendous ability through his life. Everyone says he is well qualified. Everyone knows he will make a great Attorney General. The fact is, politics is getting in the way of his confirmation.

I urge my fellow Members in this body to support and confirm him as the next Attorney General of the United States.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I rise today to oppose the nomination of Judge Alberto Gonzales to be the Attorney General of the United States. The Attorney General is the chief law enforcement officer for our country with tremendous legal powers. He or she is responsible for enforcing our laws and for making important decisions on how they will be interpreted. The Attorney General can decide what person will be charged with a crime or detained. This is a job that requires sound legal judgment and impartiality because the Attorney General's duty is to uphold the Constitution and the rule of law.

But this job is not just about our laws; it is also about the ideals of our country. It is about what we stand for. It is about our freedom and liberty and justice as embodied in our Constitution. It is about representing these fundamental types of democracy, not just to Americans but to the world.

During the inauguration, we heard the wonderful words from President Bush about the cause of freedom. I was pleased to hear him talk about our history as a country that has led the world in the cause of freedom. These are the ideals that our children learn about every day. We should be proud of our history. But our words must match our deeds.

I am deeply concerned not only about Mr. Gonzales's judgment, but that his confirmation would send the wrong message to the world about the value we place on our basic constitutional rights. Judge Gonzales has played a prominent role in shaping this administration's policy on detention and torture. Some of these policies have not only damaged our country's reputation and moral leadership, but they have also placed our troops in greater danger. Judge Gonzales holds legal positions that violate treaties the United States has ratified and supported, and he helped to provide the justification for the treatment of prisoners that led to the abuses at Abu Ghraib.

He also advocated and advised the President on legal positions that circumvented the Geneva Conventions. In following Judge Gonzales's advice to circumvent the Geneva Conventions, this administration clearly set the stage for the abuses at Abu Ghraib, the torture scandal, and this opinion ignored decades of U.S. support for humane treatment of prisoners. Such a reckless disregard for human rights laws not only violates international law but, again, it puts our own troops at additional peril.

The Convention Against Torture, which was ratified by the United States in 1994, prohibited torture and cruel, inhumane or degrading treatment. The Senate defined such treatment as abuse that would violate the 5th, the 8th, or 14th amendment to our Constitution. This standard was formally accepted by the Bush administration.

During Judge Gonzales's testimony it became clear that under his watch the administration twisted this straightforward standard to make it possible for the CIA to subject detainees to practices such as simulated drowning and mock execution. The standard he approved defined torture as inflicting pain equivalent to ''serious physical injury, such as organ failure, impairment of bodily function or even death.''

In his testimony he told the committee that these constitutional amendments do not apply to foreigners held abroad; therefore, in his view, the torture treaty does not bind intelligence interrogators operating on foreign soil.

Such a distortion is unacceptable and, again, is dangerous to our troops who are serving us on foreign soil.

How can someone who has sought to find the loopholes in the law be entrusted to be the chief law enforcement officer of our land?

These attempts to circumvent the very laws he will be called upon to enforce not only show a reckless disregard for the law, put our troops in further danger, but they have damaged our position in the world. Since World War II, the United States has been a moral authority in the world, an effective leader on the world stage. Such damage not only tarnishes our reputation in the world, but it negatively affects our very ability to enlist our allies in the critical war on terror. How can we hope to reclaim the moral leadership we once had with this person as our chief law enforcement officer? What signal does this send to the world?

For more than 10 years, Judge Gonzales has served as President Bush's legal counsel, but now he must represent a higher authority, the Constitution of the United States of America, and he must do so with integrity and independence from his former long-term client.

The Attorney General of the United States cannot be a spokesperson for the President. The Attorney General is the highest ranking law enforcement officer in the land. The Attorney General has responsibilities for enforcing, interpreting, and creating the laws that govern our democratic way of life in the United States. It is, therefore, imperative that the person who holds this position be someone who has the confidence of the American people. Our laws must come first. He or she must look not for the political rationale or the loophole but, rather, always seek the appropriate legal path, as guided by the U.S. Constitution. This is the people's attorney.

I was disturbed that during the confirmation hearings Judge Gonzales restated his belief that the Commander in Chief can override—can override—the laws of our country and immunize others to perform what would otherwise be unlawful acts. This is wrong. No one person can stand above the laws that govern our Nation. The rule of law applies to every one of us, including the President of the United States.

I had hoped that during his testimony before the Senate Judiciary Committee, Judge Gonzales would have used the opportunity to address these questions and concerns, and that he would have also used it as an opportunity to demonstrate an understanding that the Attorney General does not represent the President but, rather, the American people, the laws of our Nation, and the Constitution of the United States.

I am troubled by the many questions that remain by his refusal to state categorically that the President may not authorize the use of torture in violation of U.S. law and the Geneva Conventions.

On Sunday, Iraqis took an important step toward democracy by holding their first free elections in decades. We applaud and celebrate with them. Let's not take a step backwards now in America by confirming a nominee who does not represent the fundamental rights that the word ''democracy'' represents.

Mr. President, I yield the floor and 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. BROWNBACK. 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. BROWNBACK. Mr. President, I rise in support of Judge Gonzales, President Bush's nominee to serve as our Nation's 80th Attorney General. I want to address a few points that have been brought up today and discuss those a little bit. We will be able to vote on this nominee this week. I think he is going to make an outstanding Attorney General. He has been an outstanding lawyer in various capacities throughout his professional career already. He is going to continue to show that. I want to articulate why that is going to be the case.

His background is well known. I serve on the Judiciary Committee. We had lengthy hearings with Judge Gonzales. We had multiple rounds. Everybody on the committee got to ask and have answered every question they asked. This is a nominee who has been through the question-and-answer process on a lengthy basis. It is time we move forward. The President needs an Attorney General. This is the office that heads so many of our functions that are very important in the war on terrorism, and we need to move forward with this.

It is well known to people who have been watching this debate. As the son of migrant workers from a family of seven children, the first to go to college, he is the epitome of the American dream. He has a law degree from Harvard. He could have done anything, yet he chose a path of public service. And he is an extraordinarily good public servant—humble, wise, has a tremendous ability to persevere through difficulty.

Through his work as chief counsel to the President, Judge Gonzales has become seasoned in national security issues and legal challenges that are essential to the job of Attorney General. He is unquestionably qualified for the position, and I have no doubt he will be confirmed by the Senate this week and should be confirmed and should be given our strong support.

I am deeply saddened by many distortions and unjustified criticisms of Judge Gonzales's nomination that he has had to go through and to face. Even if you disagree with the administration in the war on terror, Judge Gonzales should have been treated during the nomination process with a level of dignity and respect by this body in going through the discussion. One can say: I believe that this is a good nominee, that this is a good person, and they should look at those criteria and those qualifications and not say: I am voting against him because I have a disagreement with the administration on a policy issue.

Undoubtedly, there are disagreements on policy issues. Undoubtedly, there are a number of people who disagree with Judge Gonzales on how he would view policy issues. But that is not the issue in the confirmation process. The issue is, is this person qualified to hold this job? Will he do a good job? The President, in winning the election, does need to have his people in key positions to be able to carry out policies that he put forward, that the American public has passed on in the election process.

In the past few weeks, there are some who have done all they can to associate Judge Gonzales with the word ''torture'' and the disturbing pictures from Abu Ghraib because he offered a legal memorandum stating that the Geneva Conventions do not apply to members of al-Qaida. These kinds of accusations are factually inaccurate and only serve to bring down the reputation and morale of our Armed Forces who are serving honorably and nobly in defense of this Nation. As we saw over this past weekend, there was an incredible vote by the Iraqi people that was so heartening to myself and to all of America because this is something we have fought for, that our young men and women have died for, to give them freedom. Now they have it, and they are expressing it.

Clearly, there are going to be problems ahead and difficulties, and it is not going to be anything close to a perfect democracy. Ours isn't yet, although we continue to aspire and are moving closer and closer toward that end. They are going to have difficulties. Yet they have made a step that would not have happened had our young men and women not put their lives on the line and the President made bold decisions that this body authorized to go to war to remove Saddam Hussein from power. Judge Gonzales has been part of the Bush team and the White House. He has done a good job there, and he will do an excellent job as Attorney General.

I wanted to take a few minutes to set the record straight on some key issues. Some have questioned Judge Gonzales's independence from the President. Judge Gonzales understands that his role as Attorney General of the United States will be very different from his role as counsel to the President. He has made that quite clear in his confirmation hearing. He stated:

> I do very much understand that there is a difference in the position of Counsel to the President and [that of] Attorney General of the United States. . . . As counsel to the President, my primary focus is on providing counsel to the White House and to White House staff and the President. I do have a client who has an agenda, and part of my role as counsel is to provide advice that the President can achieve that agenda lawfully. It is a much different situation as Attorney General, and I know that. My first allegiance is going to be to the Constitution and to the laws of the United States.

Upon confirmation, Judge Gonzales will be ready and able to take on the independent responsibilities of the Attorney General. His service as a Texas Supreme Court justice proved his ability to be independent from then-Governor and now-President Bush. At his confirmation hearing, he indicated he would be very sensitive to any perception that law enforcement was being politicized by the White House and would seek to avoid such perceptions by ''talk[ing] to the career staff . . . to make them understand that [he's] coming to th[e] department with a clear understanding of the distinct roles between the two jobs.

Remember, this is a gentleman who earlier in his professional career served on the Texas Supreme Court, a Supreme Court of one of the States of United States. He understands a different position. He has been in an independent position. He understands these different roles and the places they serve in Government. And he understands how they work and he will abide by them.

Also at his hearing he emphasized the ''very restrictive contacts policy between the [Justice] Department and the White House, limiting who from the White House can contact the Department of Justice,'' saying that ''what we don't want to have is people from various divisions within the White House calling the Department about an ongoing investigation.''

He offered his commitment to ensure that the contacts policy is as strong as it should be. He also offered his commitment to abide by that policy. Judge Gonzales has stated his commitment to respecting and fostering the professionalism of the career employees of the Department of Justice. In response to written followup questions from the Senator from Massachusetts, Judge Gonzales said he would ''do everything in [his] power to reassure the career professionals at the Department and the American people that [he] would not politicize the Department.''

There is a direct statement from Judge Gonzales of how he would operate.

Judge Gonzales emphatically endorsed the proposition that ''all government lawyers should always provide an accurate and honest appraisal of the law, even if that will constrain the administration's pursuit of desired policies.''

Again, that is another direct quote from Judge Gonzales in response to a question by a Member of the Senate.

Judge Gonzales also suggested in his response to the Senator from Massachusetts that his close personal relationship with the President would make it easier for him to be honest and forthright with the President. So he has a personal relationship that he can build on as well, but he understands the professional relationship. He is a lawyer, and he understands the role in which he would be serving.

I would like to make it clear that on the issue of the Geneva Conventions, despite what you are hearing today, the United States is committed to complying with the governing law and treaty obligations in the war on terrorism.

There have been some criticisms of Judge Gonzales regarding the Geneva Conventions. Some have claimed that

Judge Gonzales finds the Geneva Conventions to be an impediment, a hindrance to our present efforts, quaint and obsolete in important respects. Others are claiming that the administration had refused to apply the Geneva Conventions to the conflict in Afghanistan:

Afghanistan was the first time in which we said that it did not apply to a conflict.

Senators have accused the administration of taking its obligations under the Geneva Conventions lightly.

The administration has fully and faithfully adhered to its obligations under the Geneva Conventions. Judge Gonzales's critics meld together two different issues: First, whether the Geneva Conventions apply to a particular armed conflict and, second, whether particular individuals in that conflict are entitled to a particular protected status under one of the Geneva Conventions. The mere fact that the Geneva Conventions apply to a conflict between two nations does not mean that all persons involved in that conflict qualify for a particular status, such as prisoner-of-war status, under the terms of the conventions.

The administration and Judge Gonzales have been very clear in separating the two issues. But as demonstrated in the claims made above, Judge Gonzales's critics have sought to confuse the issue by mixing the two questions.

The administration did not determine that the Geneva Conventions did not apply in enemy conflict in Afghanistan. Rather the President determined that the Geneva Conventions do, indeed, apply to the conflict in Afghanistan, but that neither al-Qaida terrorists nor Taliban fighters qualify for prisoner-of-war protections under the Geneva Conventions.

This obvious distinction is grounded in the very text of the Geneva Conventions. This has been ignored by Judge Gonzales's critics. The judge explained the distinction quite clearly in his testimony before the Judiciary Committee. He stated this:

There was a decision by the President that Geneva would apply with respect to our conflict with the Taliban. However—and I believe there is little disagreement about this as a legal matter—because of the way the Taliban fought against the United States, they forfeited their right to enjoy prisoner-of-war legal protections.

Judge Gonzales has repeatedly affirmed his respect for the Geneva Conventions. He has worked to ensure that we protect Americans from the threat of terrorism, while treating al-Qaida and Taliban detainees humanely and, to the extent appropriate and consistent with military necessities, in keeping with the principles of the Geneva Conventions.

Judge Gonzales has also stated further at the hearing:

I consider the Geneva conventions neither obsolete nor quaint.

In closing, we have an outstanding nominee in judge Gonzales. His personal background is one of incredible accomplishments. His ability and his legal mind are excellent. His commitment to public service is tremendous. The faith that people have in him is there and is what we need in a person who is Attorney General of the United States. We need to have a person there that people look up to and say this is a person who will uphold the law, who is an upright individual, and will do all he can to make this a better place. Judge Gonzales will do all of those things and he will do it in a tremendous fashion.

I don't think this is a particularly helpful or good debate, where we question a person's ability to stand independent, or to do these other things, when that person stated clearly he would and his past track record has shown that he will.

For those reasons, I hope we can move expeditiously through this debate. Let people question his ability if they choose, but let's have the vote and get Judge Gonzales approved to serving this country in this important time and in this very important job.

Mr. KOHL. Mr. President, in many ways, Judge Gonzales's life story is the American dream—rising from humble beginnings to being nominated to be our Attorney General. Yet, Judge Gonzales must be evaluated on more than his life story; indeed, the decisions he has made in his public capacity must be closely scrutinized. We are, after all, being asked to confirm him as the Nation's chief law enforcement officer.

We begin with a standard of granting deference to the President to surround himself with the people he chooses for his Cabinet. But that deference is not absolute. The Attorney General is not the President's lawyer, but the people's lawyer. As I listened to the nominee's answers at his confirmation hearing, read his responses to our additional questions, and examined the facts, I found that my deference was challenged. Indeed, we are being asked to confirm the administration's chief architect of its legal policies in the war on terror—policies with questionable legal support that have proven harmful to the conduct of the war and injured our reputation abroad.

We must expect more from our Attorney General. The war on terrorism has proven more clearly now than ever before that the Justice Department's mission is too central to our democracy to be entrusted to someone who leaves us with such doubt. As the President's chief legal officer in the White House, Judge Gonzales's advice sadly fell short time and again. For these reasons, I must vote no.

A closer examination of the administration's legal policies demonstrates why we have reached this conclusion. Over the strong objections of Secretary of State Powell, career military lawyers, and others with great expertise, Judge Gonzales advised the President to deny prisoners the protections of the Geneva Conventions. Others warned Judge Gonzales that this advice could undermine military culture, generate confusion about how to treat detainees, and ultimately lead to abuse. We now know that their worst fears were warranted.

His role in shaping the policy on torture was similarly regrettable. The ''torture memo'' that was drafted at Judge Gonzales's request stood as administration policy for 2 years. The Defense Department used the memo's disturbing conclusions to justify abusive interrogation techniques.

These policies have consequences. To defeat terrorism, the 9/11 Commission concluded that we must win the war of ideas in the Muslim world. The importance of this recommendation cannot be emphasized enough. Undermining our fundamental commitment to due process, failing to honor our international agreements, and flouting our laws prohibiting torture and war crimes harms that effort.

Judge Gonzales's performance at the hearing did little to alleviate our concerns. We heard him condemn torture, generally, but refuse to discuss what he thought constituted torture. We heard him commit to honor our international agreements but waffle when asked when they apply. We heard him denounce the abuses that were committed in Iraq but refuse to discuss whether they might be illegal. We heard him commit to hold anyone involved responsible for their actions but repeat predetermined conclusions about what happened and who was to blame.

When asked by members of the Judiciary Committee about his views on these policies and his roll in shaping them, Judge Gonzales either could not remember or was nonresponsive. When asked about whether he thought torture was ever productive, after more than 2 years of participating in discussions on the subject, he told the Committee, ''I have no way of forming an opinion on that.'' He admits to attending meetings where specific methods of torture were discussed but told the committee that he cannot recall anything that was said. His evasiveness was not an encouraging preview or his ability to be candid with the American people about the basis of the decisions he will be responsible for making as our Attorney General.

This has not been an easy decision to reach. We hope that if Judge Gonzales is confirmed, he will prove us wrong. For now, however, our doubts are too great to support his nomination.

MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO NATHAN ADELSON HOSPICE

Mr. REID. Mr. President, I rise today to recognize the important work of the Nathan Adelson Hospice in Las Vegas.

For more than 25 years, the Nathan Adelson Hospice has been the only nonprofit provider of hospice care in southern Nevada. When the Nathan Adelson Hospice was established in 1978, it was one of the first hospices in the country. Its mission is to provide dignified and compassionate care for the terminally ill and their loved ones. In keeping with this mission, no one is turned away from the Nathan Adelson Hospice due to lack of funds.

As great as it is, the Nathan Adelson Hospice is always trying to improve the care it offers to patients. Last year, the hospice began construction on a 16-bed, inpatient facility in Henderson, NV. This facility will provide respite services for families, pain and symptom management for patients, and day care for adults in the community. It is a state-of-the-art facility, and I am pleased to say that I was able to secure funds to help with its construction.

Finally, my recognition of the Nathan Adelson Hospice would be incomplete without mentioning its efforts on behalf of minorities. Studies indicate that minorities and members of traditionally underserved populations do not take advantage of hospice care as much as they should. In fact, while minorities make up almost 30 percent of the U.S. population, they account for fewer than 20 percent of hospice patients nationwide. Some experts have suggested that inequities in access to health care, cultural differences, and language barriers are responsible for this situation.

No matter the reasons, it is clear that members of minority communities could benefit from greater access to hospice care. That is why I was so pleased to hear of the Nathan Adelson Hospice's new efforts to expand care to Nevada's underserved minority communities.

Last week, the Nathan Adelson Hospice hosted a multicultural luncheon and concert in an effort to connect with minority businesses that want to sponsor outreach and educational efforts for minority communities in Las Vegas. This event was a creative way to build business and community partnerships while raising the profile of an important program.

I know you will join me in applauding the Nathan Adelson Hospice, and its efforts to increase minority participation in hospice care.

TRIBUTE TO DON WILSON

Mr. REID. Mr. President, I rise today to acknowledge and honor the work of my good friend, Don Wilson, who will be retiring after 22 years of service to the people of Nevada in the House of Representatives and the United States Senate.

Don was born in Carl Junction, MO, in 1939. His father, like my own, was a miner, and the search for work led the Wilson family to move around the West for much of Don's early years. The Wilsons spent time in Oklahoma, South Dakota, Idaho, New Mexico and Washington State and finally settled in Henderson, NV in June 1952.

I first met Don at Basic High School in Henderson in 1957, and we quickly became friends. He and I both played on the football and baseball teams together, but Don was the star. He set many records, some of which stand to this day, and he led our high school teams to several championships. One year, he even batted over .500. With that type of talent, it is hardly surprising that Don earned a full athletic scholarship at Arizona State University in Tempe, where he graduated with a degree in marketing in 1961.

After graduation, Don worked for a few months for IBM Corporation. He was drafted, however, in 1962 and served his country honorably for 2 years in the Army. He worked in the Clark County Juvenile Justice System for over 15 years, trying to make a difference in the lives of troubled young Nevadans. During his time at the Juvenile Court, he served in various leadership positions, including director of the Spring Mountain Youth Camp.

Since then, Don has worked hard on behalf of Nevada on my staff—both in the House of Representatives and in the United States Senate. He filled many roles in my office over the years—legislative assistant, business manager, and currently deputy regional manager for my Las Vegas office—but, first and foremost, he has remained my trusted friend.

Abraham Lincoln once said, ''The better part of one's life consists of his friendships.'' Don Wilson has been my friend for the better part of my life, and I thank him for this friendship and look forward to our continued relationship in the years to come.

UNION LEAGUE CLUB OF CHICAGO

Mr. DURBIN. Mr. President, I rise today to commend the fine members of the Union League Club of Chicago on the 125th anniversary of the organization's founding in 1879.

On behalf of the people of Illinois, I thank all of the members of the Union League Club of Chicago, both past and present, for their shining example of civic leadership. The Union League Club of Chicago has a proud history of patriotism and service to the Chicago community, the State of Illinois, and the Nation. Since its founding to rally citizens in defense of the Union during the Civil War, this organization has forged partnerships with other prominent civic organizations to support a broad range of social, military, and nonpartisan political activities.

The same organization that was instrumental in bringing the World Columbian Exposition to Chicago in 1893 today supports Chicago youth with four Boys and Girls Clubs, sustains the arts through grants from the Union League Civic and Arts Foundation, and supports our Armed Forces through the Armed Forces Council of Chicago, an American Legion Post and several support groups.

I know that my fellow Senators will join me in congratulating members of the Union League Club of Chicago on their accomplishments and commitment to their community. I am confident that this proud history and tradition will continue with future generations of like-minded members for another 125 years.

RULES OF PROCEDURE—COMMITTEE ON VETERANS' AFFAIRS

Mr. CRAIG. Mr. President, the Committee on Veterans' Affairs has adopted rules governing its procedures for the 109th Congress. Pursuant to Rules XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator AKAKA, I ask unanimous consent that a copy of the Committee rules be printed in the RECORD.

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

COMMITTEE ON VETERANS' AFFAIRS RULES OF PROCEDURE

I. MEETINGS

(a) Unless otherwise ordered, the Committee shall meet on the first Wednesday of each month. The Chairman may, upon proper notice, call such additional meetings as deemed necessary.

(b) Except as provided in subparagraphs (b) and (d) of paragraph 5 of rule XXVI of the Standing Rules of the Senate, meetings of the Committee shall be open to the public. The Committee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceedings of each meeting whether or not such meeting or any part thereof is closed to the public.

(c) The Chairman of the Committee, or the Ranking Majority Member present in the absence of the Chairman, or such other Member as the Chairman may designate, shall preside at all meetings.

(d) Except as provided in rule XXVI of the Standing Rules of the Senate, no meeting of the Committee shall be scheduled except by majority vote of the Committee or by authorization of the Chairman of the Committee.

(e) The Committee shall notify the office designated by the Committee on Rules and Administration of the time, place, and purpose of each meeting. In the event such meeting is canceled, the Committee shall immediately notify such designated office.

(f) Written notice of a Committee meeting, accompanied by an agenda enumerating the items of business to be considered, shall be sent to all Committee members at least 72 hours (not counting Saturdays, Sundays, and Federal holidays) in advance of each meeting. In the event that the giving of such 72–hour notice is prevented by unforeseen requirements or Committee business, the Committee staff shall communicate notice by the quickest appropriate means to members or appropriate staff assistants of Members and an agenda shall be furnished prior to the meeting.

(g) Subject to the second sentence of this paragraph, it shall not be in order for the

Committee to consider any amendment in the first degree proposed to any measure under consideration by the Committee unless a written copy of such amendment has been delivered to each member of the Committee at least 24 hours before the meeting at which the amendment is to be proposed. This paragraph may be waived by a majority vote of the members and shall apply only when 72-hour written notice has been provided in accordance with paragraph (f).

II. QUORUMS

(a) Subject to the provisions of paragraph (b), eight members of the Committee shall constitute a quorum for the reporting or approving of any measure or matter or recommendation. Five members of the Committee shall constitute a quorum for purposes of transacting any other business.

(b) In order to transact any business at a Committee meeting, at least one member of the minority shall be present. If, at any meeting, business cannot be transacted because of the absence of such a member, the matter shall lay over for a calendar day. If the presence of a minority member is not then obtained, business may be transacted by the appropriate quorum.

(c) One member shall constitute a quorum for the purpose of receiving testimony.

III. VOTING

(a) Votes may be cast by proxy. A proxy shall be written and may be conditioned by personal instructions. A proxy shall be valid only for the day given.

(b) There shall be a complete record kept of all Committee action. Such record shall contain the vote cast by each member of the Committee on any question on which a roll call vote is requested.

IV. HEARINGS AND HEARING PROCEDURES

(a) Except as specifically otherwise provided, the rules governing meetings shall govern hearings.

(b) At least 1 week in advance of the date of any hearing, the Committee shall undertake, consistent with the provisions of paragraph 4 of rule XXVI of the Standing Rules of the Senate, to make public announcements of the date, place, time, and subject matter of such hearing.

(c) The Committee shall require each witness who is scheduled to testify at any hearing to file 40 copies of such witness' testimony with the Committee not later than 48 hours prior to the witness' scheduled appearance unless the Chairman and Ranking Minority Member determine there is good cause for failure to do so.

(d) The presiding member at any hearing is authorized to limit the time allotted to each witness appearing before the Committee.

(e) The Chairman, with the concurrence of the Ranking Minority Member of the Committee, is authorized to subpoena the attendance of witnesses and the production of memoranda, documents, records, and any other materials. If the Chairman or a Committee staff member designated by the Chairman has not received from the Ranking Minority Member or a Committee staff member designated by the Ranking Minority Member notice of the Ranking Minority Member's nonconcurrence in the subpoena within 48 hours (excluding Saturdays, Sundays, and Federal holidays) of being notified of the Chairman's intention to subpoena attendance or production, the Chairman is authorized following the end of the 48-hour period involved to subpoena the same without the Ranking Minority Member's concurrence. Regardless of whether a subpoena has been concurred in by the Ranking Minority Member, such subpoena may be authorized by vote of the Members of the Committee. When the Committee or Chairman authorizes a subpoena, the subpoena may be issued upon the signature of the Chairman or of any other member of the Committee designated by the Chairman.

(f) Except as specified in Committee Rule VII (requiring oaths, under certain circumstances, at hearings to confirm Presidential nominations), witnesses at hearings will be required to give testimony under oath whenever the presiding member deems such to be advisable.

V. MEDIA COVERAGE

Any Committee meeting or hearing which is open to the public may be covered by television, radio, and print media. Photographers, reporters, and crew members using mechanical recording, filming or broadcasting devices shall position and use their equipment so as not to interfere with the seating, vision, or hearing of the Committee members or staff or with the orderly conduct of the meeting or hearing. The presiding member of the meeting or hearing may for good cause terminate, in whole or in part, the use of such mechanical devices or take such other action as the circumstances and the orderly conduct of the meeting or hearing may warrant.

VI. GENERAL

All applicable requirements of the Standing Rules of the Senate shall govern the Committee.

VII. PRESIDENTIAL NOMINATIONS

(a) Each Presidential nominee whose nomination is subject to Senate confirmation and referred to this Committee shall submit a statement of his or her background and financial interests, including the financial interests of his or her spouse and of children living in the nominee's household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts—

(A) information concerning employment, education, and background of the nominee which generally relates to the position to which the individual is nominated, and which is to be made public; and

(B) information concerning the financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated. Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the Ranking Minority Member, waives this waiting period.

(b) At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any Member, any other witness shall be under oath.

VIII. NAMING OF DEPARTMENT OF VETERANS AFFAIRS FACILITIES

It is the policy of the Committee that no Department of Veterans Affairs facility shall be named after any individual unless—

(A) such individual is deceased and was—

(1) a veteran who (i) was instrumental in the construction or the operation of the facility to be named, or (ii) was a recipient of the Medal of Honor or, as determined by the Chairman and Ranking Minority Member, otherwise performed military service of an extraordinarily distinguished character;

(2) a member of the United States House of Representatives or Senate who had a direct association with such facility;

(3) an Administrator of Veterans' Affairs, a Secretary of Veterans Affairs, a Secretary of Defense or of a service branch, or a military or other Federal civilian official of comparable or higher rank; or

(4) an individual who, as determined by the Chairman and Ranking Minority Member, performed outstanding service for veterans;

(B) each member of the Congressional delegation representing the State in which the designated facility is located has indicated in writing such member's support of the proposal to name such facility after such individual; and

(C) the pertinent State department or chapter of each Congressionally chartered veterans' organization having a national membership of at least 500,000 has indicated in writing its support of such proposal.

IX. AMENDMENTS TO THE RULES

The rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that no less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose. The rules governing quorums for reporting legislative matters shall govern rules changes, modification, amendments, or suspension.

UNITED STATES-INDONESIA MILITARY RELATIONS

Mr. LEAHY. Mr. President, last week I listened to the comments of my friend, the senior Senator from Missouri, regarding the devastating impact of the tsunami in Aceh, Indonesia, which caused so much loss of life and destruction of property. Senator BOND paid tribute to the contributions of American relief agencies that have done so much to alleviate the suffering there, and I want to echo those comments.

He also expressed concern about what he called ''unintended consequences'' of restrictions on our assistance to the Indonesian military, otherwise known as the TNI. Specifically, he referred to the International Military Education and Training Program, and spare parts for C–130 aircraft.

I want to respond to that portion of Senator BOND's remarks, to be sure there is no misunderstanding about what our law says.

To begin with, I want to disabuse those who might be misled by some Indonesian officials who often mistakenly refer to a U.S. military ''embargo'' against Indonesia. I ask unanimous consent that a Defense Department document from our Embassy in Jakarta, which describes the many programs and other contacts we currently have with the TNI, be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. The fact is that the TNI participates in training programs under both the expanded International Military Education and Training, E–IMET, program and the Counterterrorism Fellowship Program, CTFP. This is the largest CTFP program currently underway anywhere in the world. Millions of dollars have been appropriated for these programs in recent years, including for the types of defense management, military justice, civil military relations, and other courses that

the Senator from Missouri and I support. The TNI is participating in the E–IMET program which Congress has funded at the level requested by the Bush administration.

Our law also does not prevent military exercises and other contacts with the U.S. military through officer visits, educational exchanges, and port visits. Perhaps the most visible evidence of this is the U.S. military working side by side with the TNI during the ongoing humanitarian relief operations in Aceh.

With respect to training, U.S. law restricts only the full restoration of regular IMET assistance until the Indonesian Government and the TNI ''are cooperating'' with the FBI's investigation into the August 31, 2002, murders of two American citizens and one Indonesian citizen. By ''cooperating,'' we obviously mean not simply cooperating in limited ways, but fully cooperating. I am concerned with reports that the TNI may have conspired with the shooters in that case, and that the one Papuan individual who has been indicted, who is not a member of the TNI, remains at large even though his whereabouts are reportedly known to the TNI.

With respect to equipment, our law does not restrict the sale of non-lethal equipment to the TNI. Specifically, with regard to spare parts for the C–130's, there has been no change in U.S. law, although I am told that there may have been a relaxation of this administration's policy. Our law does not and never has prevented the sale of spare parts for these aircraft for humanitarian purposes. Over 4 years ago, when the TNI first requested to purchase C–130 spare parts for ''search and rescue'' missions, the U.S. Ambassador and I, as well as, I am told, the Secretary of Defense, informed the Indonesians that this was not prohibited by either U.S. law or policy and that they could purchase these parts from us. For reasons the Pentagon is aware of, the TNI decided to obtain them elsewhere.

The only conditions on the sale of lethal equipment are that the Indonesian Government is prosecuting and punishing members of the TNI for gross violations of human rights, and that the TNI is (1) taking steps to counter international terrorism consistent with democratic principles and the rule of law; (2) cooperating with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights; and (3) implementing financial reforms to deter corruption.

There are good reasons for these limited conditions. The United States has provided hundreds of millions of dollars in training and equipment to the Indonesian military since the 1950s. Despite the close relationship that developed between the U.S. military and the TNI over four decades, the TNI acquired a reputation for being notoriously abusive and corrupt. After the TNI murdered some 200 civilians in a cemetery in Dili, East Timor in 1992, our IMET assistance was cut off. Our relations with the TNI were further curtailed in 1999, after the independence referendum in East Timor when the TNI orchestrated widespread killings and the destruction of property. Although senior TNI officers have repeatedly vowed to support reform, they have done next to nothing to hold their members accountable for these heinous crimes. Instead, the TNI has consistently obstructed justice.

I should note that these conditions do not apply to the Indonesian navy. Congress specifically exempted the navy because enhancing maritime security is a critical priority.

There are also credible reports that after 9/11, the TNI provided support to radical Indonesian groups that have been involved in terrorism.

Since 1999, restrictions on our relations with the TNI have been narrowed, and today, as I mentioned, we have a wide range of military-to-military activities.

I am disappointed that some Pentagon officials and my friend from Missouri, rather than acknowledging the extent of the United States-Indonesia military relationship and urging the TNI to demonstrate that it is serious about reform by meeting these reasonable conditions, have expressed support for weakening our law.

Indonesia's new President Yudhoyono is a career military officer. He has a reputation as a reformer, and I wish him well. I have always supported substantial economic assistance to Indonesia. In fact, Senator MCCONNELL, the Chairman of the Foreign Operations Subcommittee, and I have worked to increase this assistance.

Prior to President Yudhoyono's election, there were some important reforms which reduced the TNI's influence in politics. But a key gap remains regarding justice for the victims of atrocities, including crimes against humanity. This is the focus of our law, and it is as important to Indonesia and the TNI as it is for the United States. I believe that President Yudhoyono should agree and want the TNI to make these necessary reforms.

I applaud the U.S. military and the TNI for working together to bring aid to tsunami victims in Aceh. But just as our policy should promote cooperation in humanitarian operations and in counterterrorism, so should it promote respect for human rights, accountability, and the rule of law. These are fundamental to the freedom and democracy that President Bush spoke of in his inaugural address. Our law, which was narrowly written to provide an incentive for reform while allowing military contacts to continue, strikes the right balance.

EXHIBIT 1

IMET/E–IMET

(Allocated FY 04 $599,000; Requested for FY 05 $600,000.)

The International Military Education and Training (IMET) program continues to be restricted for Indonesia. However, training is allowed with IMET funding for Expanded–IMET (E–IMET) courses for both military and civilians.

E–IMET courses have included a wide-range of programs, including seminars, in-country Mobile Education Teams, and Masters Programs at Naval Postgraduate School. Topics have included defense management, national security affairs, defense restructuring, civ-mil relations, resource management, military law, peacekeeping operations, and other important topics.

COUNTER-TERRORISM FELLOWSHIP PROGRAM (CTFP)

Largest CTFP Program in the world. (Allocated FY B04 $500,000; Supplemental $386,826; FY B05 Allocation $600,000.) (Allocated B02 ''No Year'' funds in 2002: $3.7 million; Current Remaining $702,000.)

Note this Remaining B02 money is Programmed through FY 05 and FY 06.

In the FY02 Defense Appropriations Act, the Regional Defense Counter-Terrorism Fellowship Program was established under section 8125.

Both civilian and military officers participate in a wide variety of courses and seminars under this program designed to improve the professionalism and management skills of TNI. CTFP training programs include intelligence cooperation, national level decision-making, civil-mil cooperation in combating terrorism, and maritime security, as well as Indonesian attendance at US Staff Colleges, War Colleges, National Defense University, and English language training and materials.

THEATER SECURITY COOPERATION PROGRAM

(Funding provided from various sources per event.)

Indonesian is an active participant in U.S. Pacific Command TSCP activities, to include regional workshops and seminars promoting cooperation on security issues, Counter-Terrorism seminars and workshops, peacekeeping workshops, and Subject Matter Expert Exchanges.

Activities are limited to non-lethal, non-combat related events.

In close cooperation with both the ODC and the Defense Attache Office, PACOM has developed a more robust TSCP program over the next two years in order to broaden our engagement with TNI and other agencies within GOI.

Indonesian participation has increased from Zero events in FY 00 to more than 85–events in FY 04, and more than 132 programmed in FY 05.

FOREIGN MILITARY SALES/FOREIGN MILITARY FINANCING

Foreign Military Sales (FMS): Remain frozen by USG policy. There remain 38 active cases with an FMS balance of $ 3.5 mil.

Foreign Military Financing (FMF) and other grant programs, such as eligibility for Excess Defense Articles (EDA), remain restricted by legislation.

($11.3 mil requested for FY 06; $6 million recommended by interagency for FY 06; focus is maritime security and C–130 parts.)

Direct Commercial Sales (DCS): USG policy has established ''carve-outs'' for specific categories of defense hardware, such as C–130 spare parts, non-lethal equipment, and ''safety of use'' items for lethal end items (an example would be CAD/PADs, propellant cartridges for ejection seats on fighter aircraft). ($928,709 released by DSCA from FMS funds 04 Jan 05 for Tsunami relief/repair of C–130s.)

TRADE MISSION TO NEW ZEALAND AND AUSTRALIA

Mr. BAUCUS. Mr. President, I rise to share some observations on my recent

trade mission to Australia and New Zealand.

In May 2004, the United States and Australia signed a historic free-trade agreement. That agreement went into force on January 1, 2005, lowering trade barriers and opening new markets for goods, services, and agriculture.

This agreement opens the door to a greater relationship with one of the most vibrant and promising economies in the world.

For Australia, it offers integration with the world's largest economic power. For the United States, it offers a link to an Australian market that has one of the highest standards of living in the world—and one of the few large economies with whom the U.S. enjoys a trade surplus.

Further benefits will accrue to U.S. exporters from using Australia as a platform for more efficient access to Asian markets.

Australia has for years pursued a strong policy of economic engagement in the Asia-Pacific region. It has completed, or is currently negotiating, trade agreements with several key countries in the region. This network of trade relationships will increase the value of the free trade agreement to U.S. exporters and investors in Australia.

The free-trade agreement further cements the relationship between the United States and one of its strongest allies in the world. Australia is a major partner with the U.S. in global antiterrorism efforts. It is a significant partner in Iraq.

It is also one of our most important partners within the WTO. As a leader of the Cairns Group, a loose association of major agriculture exporting countries, Australia has been a reliable ally in our fight for reform of global agriculture markets.

I believe in economic engagement and in trade. Reducing barriers and opening markets creates opportunities and jobs. It helps spread the values of democracy and international cooperation.

But the benefits of trade do not come without challenges. In the case of Australia, it is our agriculture sector that was initially concerned about the challenges a free trade agreement might pose. This is particularly true in Montana, where agriculture makes up about one half of the State's economy.

That is why I worked hard to make sure the United States-Australia Free-Trade Agreement was a good deal for the United States and a good deal for Montana. By working with negotiators from both Governments, I was able to include strong provisions that leveled the playing field for Montana's agriculture industry in the deal, while also assuring Montana's businesses access to tremendous new market opportunities.

With a strong deal in place, it was a good time to see for myself what new opportunities are available in Australia and to start making the free-trade agreement work for Montana.

Joining me were a group of nine Montana business and agriculture leaders—representing the full range of our State's economy, including manufacturing, agriculture, tourism, and services. They were: Montana Chamber of Commerce president Webb Brown, from Helena; Greg Dumontier of St. Ignatius, general manager of S & K Technologies; David Cameron of Bozeman, a rancher and retired biologist with Montana State University; Steve Holland, director of the Montana Manufacturing Extension Center in Bozeman; Fraser McLeay, senior manager with the Montana World Trade Center in Missoula; Lillian Ostendorf of Powderville, State Women's Committee chair with the Montana Farm Bureau; Mike Overstreet of Billings, chairman of the board and vice president of international relations for Corporate Air; Jeff Ruffner of Butte, senior vice president and general manager with MSE Technology Applications; and Kathy Brown, property manager with Project Management in Helena.

Also joining the delegation were several representatives of some of our largest national companies with operations in Australia and the Asia-Pacific region. They were: David Beier, senior vice president for global government affairs for Amgen, Inc.; Lionel Johnson, vice president and director, International Government Affairs, for Citigroup, Inc.; Thomas Quinn, partner with the law firm Venable, representing U.S. Tobacco; and Elizabeth Schwartz, vice president for legislative affairs for the Boeing Company.

The goal of our trade delegation was to meet with business and government leaders, build relationships, find opportunities, and discuss solutions to common challenges. We met with great success.

A highlight of the visit was a meeting of the entire delegation with Australian Prime Minister John Howard at Parliament House in Canberra.

I was very pleased to have the opportunity to personally thank Prime Minister Howard for working with me to address Montana's interests in the free-trade agreement. We also explored ways Australia and the United States can work together to advance our mutual interests in the World Trade Organization, the Asia-Pacific Economic Forum, and the Asia-Pacific region.

In Sydney, members of the delegation were able to benefit from the experience of AmCham members doing business in Australia and of the U.S. Commercial Service. Many participated in individual business meetings with counterparts or potential customers in Sydney, Melbourne, and Brisbane.

Our thanks go out to the U.S. Embassy and Consulate staffs in Canberra, Sydney, and Melbourne for all their hard work making this such a productive and meaningful trip for me and for each member of the delegation. I particularly want to thank U.S. Ambassador to Australia J. Thomas Schieffer for his hospitality and assistance.

I also thank Australian Ambassador to the United States Michael Thawley and his staff in Washington for all their help in making the trip such a success.

During the negotiations of the United States-Australia Free-Trade Agreement, Ambassador Thawley and Adam McCarthy from his staff made several trips to Montana. They met with our state officials, business and agriculture groups, and were able to contribute to their own negotiators' sensitivity to Montana's goals in the negotiations. The results were, I believe, in the best interests of both Montana and Australia.

I am excited about future prospects for trade and cooperation with Australia. Australia is a large market for American manufactured goods and services and promises to become an even larger one. For example, Australia is fast becoming a major market for Montana's growing high tech and services industries, including medial products, environmental consulting, and engineering.

In addition, from Montana's perspective, one of the most important aspects of the new trade agreement goes beyond its market access provisions: it is Australia's commitment to support the United States in its efforts to negotiate disciplines on state trading enterprises in the WTO Doha Round.

State trading enterprises like the Canadian Wheat Board and the Australian Wheat Board give agricultural producers in those countries unfair advantages when competing with our world class Montana agricultural products in global markets.

I also used the visit as an opportunity to promote cooperation between Australia and the United States on a broader range of multilateral and regional trade and economic issues.

Australia and the United States have a mutual interest in promoting a broad vision of Asia-Pacific economic integration. We are both Pacific powers, but not Asian.

If we neglect our ties with Asia, we risk a narrow Asian economic integration that deprives our businesses of the most preferential access to these growing markets. I challenged the Government and the private sector in Australia to be our partners in broadening that vision.

Our trade efforts also led us to New Zealand. While not as big a country as Australia, New Zealand is an important trading partner for the United States. In 2003, merchandise trade between the two countries exceeded $4 billion. There was an additional $2 billion in trade in the service sector.

Exports of Montana products to New Zealand increased more than sevenfold over the last 5 years. Equally important to Montana, New Zealand kept a cool head and did not overreact to the recent BSE scare with a ban on U.S. beef—a major product in my State and critical to our economy.

More importantly, New Zealand is a vital piece in the Asian puzzle. Just as

with our relationship with Australia, an enhanced commercial relationship between the United States and New Zealand would offer yet another platform for increased exports to the growing markets in places like China, Thailand, Taiwan, and Malaysia.

That is why I have long been an advocate for closer economic ties between our countries. In fact, back in 2001, I introduced legislation to authorize fast-track consideration of a free-trade agreement with New Zealand.

The New Zealand Government has been actively pursuing a free-trade agreement with the United States for several years. Up until recently, they have been rebuffed by the Bush Administration for reasons having nothing to do with the potential economic merits of such an agreement.

I disagree with that approach. I believe that trade agreements should be pursued or not pursued primarily on the basis of their economic merit.

I thought it was time to allow the Government of New Zealand to make its case. And so I brought my trade delegation to New Zealand to meet with Government officials and business representatives, to explore market opportunities, and to build new relationships.

As in Australia, a highlight of the visit was my meeting with New Zealand Prime Minister Helen Clark. Prime Minister Clark and I discussed prospects for a bilateral free-trade agreement and also exchanged views on how the United States and New Zealand can cooperate on regional and multilateral trade issues.

I told the Prime Minister that I think a free-trade agreement between the United States and New Zealand makes sense—so long as it is the right agreement. And the Australia Free-Trade Agreement—with its strong protections for Montana agriculture—is the right model to follow.

Australia and New Zealand share a common market. For that reason, it would have made sense to include New Zealand in the United States-Australia Free-Trade Agreement in the first place.

The Administration settled for 80 percent of the Australia-New Zealand market, when it could have had 100 percent. But that is in the past, and Prime Minister Clark and I agreed that we need to look forward.

During my visit, I was also privileged to meet, along with members of my delegation, with New Zealand's Minister of Agriculture and Trade Negotiations Jim Sutton and Minister of Foreign Affairs and Trade Phil Goff. I appreciate the useful and wide-ranging discussions that we shared.

In New Zealand, the trade delegation was able to visit several cutting-edge agricultural facilities, including a revolutionary robotic milking station, an advanced agricultural research station, and an agricultural technology incubator. Many of the Montanans who participated in the trip have gone home with new ideas that will help them both emulate and compete with their New Zealand counterparts.

My sincere thanks go out to our hosts, the Government of New Zealand, for their great hospitality. I also thank the U.S. Embassy and Consulate staffs in Wellington and Auckland for all their hard work putting together a fantastic schedule for a whirlwind 2-day visit. I particularly want to thank U.S. Ambassador to New Zealand Charles Swindells for his advice and assistance.

Finally, I thank New Zealand Ambassador to the United States John Wood as well as Ian Hill and Janette Malcolm from the New Zealand Embassy in Washington for all their help in making the trip such a success.

After all the government meetings, tours of agricultural facilities, and discussions with business groups, I came away believing that the right free-trade agreement with New Zealand makes sense for the United States and makes sense for Montana.

Like Australia, New Zealand is a strong market for American manufactured goods and services. Like Australia, New Zealand can serve as a launching pad for reaching Asian markets. And New Zealand is a developed country with a strong legal system, which sets the stage for a high-standards agreement.

You may not guess this, but from Montana's standpoint, New Zealand is a more important market, relatively speaking, than it is for the United States as a whole. While New Zealand is the United States' 49th largest trading partner, it is one of Montana's top 25 export markets—not far behind Malaysia, and more important than Thailand or the Philippines.

That doesn't mean it would be easy. I know that negotiating a free-trade agreement with New Zealand would raise sensitive issues for Montana's farmers and ranchers, several of whom joined me on the trip. But I also know that facing difficult trade issues pays off in the end.

That is because—in the end—trade means jobs.

There are tremendous opportunities in the Australia and New Zealand markets awaiting those Americans intrepid enough to seek them out. Increased trade will generate jobs and good-paying ones at that.

I want Montana to participate in and benefit from an enhanced trading relationship with these countries.

Yet, in a more general sense, these enhanced relationships are about openness.

While historians like to talk about the past 100 years as the ''American Century,'' Americans are anxious about the challenges facing our country. We wonder whether our children and grandchildren will enjoy the same standard of living we have known.

Faced with this uncertainty, some Americans look at the Pacific Rim and see danger. They see the rise of China's and Asia's economic prowess as a threat to American prosperity.

But we have never been a nation that succeeds only by the economic failure of others.

We used the Marshall Plan to help pull Europe out of economic distress—and have benefited enormously. We believed that capitalism would win the Cold War—and it did.

Now China, Vietnam, Russia, and others are beginning the transition to a free market economy. This is a positive development—not one to fear.

To me, the challenge is elementally about whether we will meet the future with open minds and open arms, or whether we will turn inward and seek shelter from the inevitable storms that change always brings.

America has never shied away from engagement with the rest of the world. We have been successful because we are confident, innovative, positive, and open. We can only lose our place in the world if we forget who we are and forget how we got here in the first place.

That is why I will continue to work for an open trade policy. It is why I will continue to fight hard for Montana's place in the world.

It is also why I think it is so important to take these trade missions abroad. In the past couple of years, I have led missions to Cuba, Japan, China, and Thailand. This time, we went to Australia and New Zealand.

Every trip has brought success. Each trip has opened doors for Montana business. And discovering the potential in any market or relationship ultimately is what makes trade work for Montana, as well as for the United States.

40TH ANNIVERSARY OF THE CONSERVANCY OF SOUTHWEST FLORIDA

Mr. NELSON of Florida. Mr. President, I rise today to congratulate the Conservancy of Southwest Florida for its 40th year of service in protecting the environment of my great State. In 1964, citizens joined together to save Rookery Bay from over-development, and since that day the conservancy and its many supporters have worked to preserve the breathtaking natural habitat and the quality of life in southwest Florida.

The Conservancy of Southwest Florida has created so many wonderful institutions that all Floridians, young and old can enjoy. This includes the Conservancy Nature Center, which allows kids and adults alike to work hands-on to learn about the ecosystem and the varied wildlife that inhabits the area. Whether it is testing water quality, acquiring at-risk lands or rehabilitating nearly 2000 animals a year, the conservancy makes Florida a better place to live.

Throughout my years in public service, the conservancy has been an ally and a friend in the work of preserving Florida's natural resources. I hope that for the next 40 years and beyond, this wonderful organization will continue

to help Florida and its citizens enjoy the beauty the state has been blessed with.

CONFIRMATION OF SAMUEL BODMAN AS SECRETARY OF ENERGY

Mr. HATCH. Mr. President, I rise today to express my support for the Senate's confirmation of Dr. Samuel Bodman as our new Secretary of Energy.

I believe Dr. Bodman will bring considerable skill to the position of Secretary of Energy. Dr. Bodman's distinguished career speaks for itself. In the private sector, he excelled as a professor at MIT, president of an investment company, and chairman and CEO of a worldwide industrial company. In these positions, he gained a great deal of knowledge in financial markets and the impact energy and technology has on those markets. He further proved his capabilities in his service as Deputy Secretary of Commerce and Deputy Secretary of the Treasury. There is no question that Dr. Bodman is qualified to assume this important position.

As a Nation, we are far too dependent on foreign sources of energy and must work to increase our energy independence. While I support domestic oil production, I also believe that we must continue to develop alternative sources of energy in the United States. In my home State, Utah State University is working with the Department of Energy to that end. I was pleased that the Department of Energy recently awarded Utah State University a grant to further the university's studies into alternative energy research and development programs. Such programs are essential to ensure we can meet our Nation's future energy needs, and I admire the university for being at the forefront on this issue.

I have a great deal of respect for Dr. Bodman, and I look forward to working with him on the compelling energy issues facing our Nation. While there will certainly be challenges to overcome as we work to shape our energy policy and increase our energy independence, I am confident that Dr. Bodman will serve admirably in the position.

HOMELAND SECURITY GRANT ENHANCEMENT ACT

Mr. FEINGOLD. Mr. President, I am pleased to again be an original cosponsor of Senator COLLINS' Homeland Security Grant Enhancement Act. This important legislation will coordinate and simplify the often complicated and confusing homeland security grant process. This bill will make it much easier for local first responders to get funding by reducing the many, and often redundant, grant applications steps. The amendment also gives local officials far more flexibility in spending homeland security dollars, including paying for overtime costs associated with homeland security tasks and training. Successful programs, such as FIRE Act grants, the COPS program, and the Emergency Management Performance Grant program, are protected in this legislation.

The legislation also tackles the controversial topic of how to allocate funding. I believe it has struck a fair balance by both allocating funding based on threat, as recommended by the 9/11 Commission and others, and maintaining baseline funding so that States and local officials can have a predictable stream of funding to meet the homeland security needs faced by all jurisdictions. As Senator COLLINS noted, the support this bill has gotten from Senators from both large and small States is indicative of the balanced approach taken by this legislation.

The Senate adopted this measure by voice vote in the last Congress as an amendment to the intelligence reform bill and it is my hope that the Senate will soon take up and pass this important bill. Simplifying and rationalizing the current homeland security grant system should be a top priority. I urge my colleagues to support this legislation and to adequately allocate resources to meet our homeland security needs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WARNER, from the Committee on Armed Services, without amendment:

S. Res. 29. An original resolution authorizing expenditures by the Committee on Armed Services.

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. Res. 30. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S. Res. 32. An original resolution authorizing expenditures by the Committee on Foreign Relations.

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. KENNEDY (for himself, Mr. CORZINE, and Mr. LAUTENBERG):

S. 224. A bill to extend the period for COBRA coverage for victims of the terrorist attacks of September 11, 2001; to the Committee on Health, Education, Labor, and Pensions.

By Mr. STEVENS (for himself, Mr. INOUYE, and Ms. MURKOWSKI):

S. 225. A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land; to the Committee on Energy and Natural Resources.

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

S. 226. A bill to amend the Public Health Service Act to improve immunization rates by increasing the supply of vaccines; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MURKOWSKI:

S. 227. A bill for the relief of Ernesto Guillen; to the Committee on the Judiciary.

By Mr. CRAPO:

S. 228. A bill to amend the Public Health Service Act to establish an Office of Men's Health; to the Committee on Health, Education, Labor, and Pensions.

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

S. 229. A bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SCHUMER (for himself and Mr. GRAHAM):

S. 230. A bill to improve railroad safety; to the Committee on Commerce, Science, and Transportation.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 231. A bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SMITH:

S. 232. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROBERTS:

S. 233. A bill to increase the supply of quality child care; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD:

S. 234. A bill for the relief of Majan Jean; to the Committee on the Judiciary.

By Mr. ENSIGN (for himself and Mr. REID):

S. 235. A bill to direct the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada; to the Committee on Energy and Natural Resources.

By Mr. NELSON of Nebraska (for himself, Ms. COLLINS, Ms. CANTWELL, and Mrs. MURRAY):

S. 236. A bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 237. A bill to amend title 23, United States Code, to ensure that certain states remain eligible for Federal highway funds; to the Committee on Environment and Public Works.

By Mr. HAGEL:

S. 238. A bill to amend the Internal Revenue code of 1986 to exclude from gross income interest received on loans secured by agricultural real property; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. WYDEN, Mr. MCCAIN, Mrs. FEINSTEIN, and Mr. FEINGOLD):

S. 239. A bill to reduce the costs of prescription drugs for medicare beneficiaries, and for other purposes; to the Committee on Finance.

By Mr. KERRY (for himself, Mr. LEAHY, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. DURBIN, Mr. PRYOR, and Ms. STABENOW):

S. 240. A bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the

military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. STEVENS, and Mr. INOUYE):

S. 241. A bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act; to the Committee on Commerce, Science, and Transportation.

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. 242. A bill to establish 4 memorials to the Space Shuttle Columbia in the State of Texas; to the Committee on Energy and Natural Resources.

By Mr. THOMAS:

S. 243. A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THOMAS:

S. 244. A bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself, Ms. CANTWELL, Ms. SNOWE, Mrs. MURRAY, Mr. JEFFORDS, and Mr. DEWINE):

S. 245. A bill to provide for the development and coordination of a comprehensive and integrated United States research program that assists the people of the United States and the world to understand, assess, and predict human-induced and natural processes of abrupt climate change; to the Committee on Commerce, Science, and Transportation.

By Mr. BUNNING (for himself, Mr. NELSON of Nebraska, Mr. DEMINT, Mr. CRAIG, Mr. INHOFE, Mr. BROWNBACK, Mr. LUGAR, Mr. SANTORUM, Mr. COLEMAN, and Mr. DOMENICI):

S. 246. A bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs; to the Committee on Finance.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 247. A bill to authorize the Secretary of the Interior to assist in the planning, design, and construction of the Tumalo Irrigation District Water Conservation Project in Deschutes County, Oregon; to the Committee on Energy and Natural Resources.

By Mr. DEMINT:

S. 248. A bill to amend title 23, United States Code, to permit States to carry out surface transportation program projects on local roads to address safety concerns; to the Committee on Environment and Public Works.

By Mr. REID (for himself, Mr. ENSIGN, and Mr. BENNETT):

S. 249. A bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah; to the Committee on Energy and Natural Resources.

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

S. 250. A bill to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 251. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Butte/Bear Creek Sub-basins in Oregon; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 252. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 253. A bill to direct the Secretary of the Interior to convey certain land to the land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 254. A bill to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries; to the Committee on Energy and Natural Resources.

By Mr. HAGEL (for himself and Mr. NELSON of Nebraska):

S. 255. A bill to amend the Residential Lead-Based Paint Hazard Reduction Act of 1992 to provide assistance for residential properties designated as Superfund sites; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GRASSLEY (for himself, Mr. HATCH, Mr. SESSIONS, Mr. THUNE, Mr. CARPER, Mr. NELSON of Nebraska, Mr. SHELBY, and Mr. ENZI):

S. 256. A bill to amend title 11 of the United States Code, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. FRIST (for himself, Mr. REID, Mr. LUGAR, Mr. BIDEN, Mr. LEVIN, Mr. SUNUNU, Mr. CHAFEE, Mr. HAGEL, and Mr. FEINGOLD):

S. Res. 27. A resolution commending the results of the January 9, 2005, Palestinian Presidential Elections; considered and agreed to.

By Mr. DODD (for himself, Mr. COCHRAN, Mr. AKAKA, Mr. BAUCUS, Mr. BINGAMAN, Mr. DURBIN, Mr. FEINGOLD, Mr. HAGEL, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. LUGAR):

S. Res. 28. A resolution designating the year 2005 as the ''Year of Foreign Language Study''; to the Committee on the Judiciary.

By Mr. WARNER:

S. Res. 29. An original resolution authorizing expenditures by the Committee on Armed Services; from the Committee on Armed Services; to the Committee on Rules and Administration.

By Mr. STEVENS:

S. Res. 30. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation; from the Committee on Commerce, Science, and Transportation; to the Committee on Rules and Administration.

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

S. Res. 31. A resolution expressing the sense of the Senate that the week of August 7, 2005, be designated as ''National Health Center Week'' in order to raise awareness of health services provided by community, migrant, public housing, and homeless health centers, and for other purposes; to the Committee on the Judiciary.

By Mr. LUGAR:

S. Res. 32. An original resolution authorizing expenditures by the Committee on Foreign Relations; from the Committee on Foreign Relations; to the Committee on Rules and Administration.

By Mr. LEVIN (for himself, Ms. COLLINS, Mr. LUGAR, Mr. REED, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. JEFFORDS, Mr. WYDEN, Ms. CANTWELL, Mr. DODD, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Mrs. MURRAY, and Mr. DORGAN):

S. Res. 33. A resolution urging the Government of Canada to end the commercial seal hunt; to the Committee on Foreign Relations.

By Mr. SARBANES (for himself, Ms. COLLINS, Mr. AKAKA, Mr. WARNER, Mr. LIEBERMAN, Mr. ALLEN, Ms. MIKULSKI, Ms. SNOWE, Mr. JOHNSON, Mr. DAYTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. DURBIN, Mr. CORZINE, Ms. LANDRIEU, Mr. BINGAMAN, and Mrs. MURRAY):

S. Con. Res. 8. A concurrent resolution expressing the sense of Congress that there should continue to be parity between the adjustments in the pay of members of the uniformed services and the adjustments in the pay of civilian employees of the United States; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 11

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 11, a bill to amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their service members, and for other purposes.

S. 12

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 12, a bill to combat international terrorism, and for other purposes.

S. 19

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 19, a bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility.

S. 27

At the request of Mrs. HUTCHISON, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 27, a bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes.

S. 37

At the request of Mrs. HUTCHISON, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Georgia (Mr. ISAKSON) were added as

cosponsors of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 40

At the request of Mrs. LINCOLN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 40, a bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to geriatric assessments and chronic care management, and for other purposes.

S. 44

At the request of Mr. HAGEL, the names of the Senator from Florida (Mr. NELSON) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 44, a bill to amend title 10, United States Code, to increase the amount of the military death gratuity from $12,000 to $100,000.

S. 50

At the request of Ms. CANTWELL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 50, a bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes.

S. 51

At the request of Mr. BROWNBACK, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 51, a bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child.

S. 77

At the request of Mr. DAYTON, his name was added as a cosponsor of S. 77, a bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes.

At the request of Mr. SESSIONS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 77, supra.

S. 103

At the request of Mr. TALENT, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 167

At the request of Mr. LEAHY, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 167, a bill to provide for the protection of intellectual property rights, and for other purposes.

S. 188

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 188, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

S. 193

At the request of Mr. BROWNBACK, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 193, a bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

S. 195

At the request of Mr. LIEBERMAN, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 195, a bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes.

S. 211

At the request of Mrs. CLINTON, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 215

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 215, a bill to amend the Native Hawaiian Health Care Improvement Act to revise and extend that Act.

S. 223

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 223, a bill to amend the Fair Labor Standards Act of 1938 to repeal any weakening of overtime protections and to avoid future loss of overtime protections due to inflation.

S. CON. RES. 4

At the request of Mr. NELSON of Florida, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.

S. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Res. 8, a resolution expressing the sense of the Senate regarding the maximum amount of a Federal Pell Grant.

S. RES. 20

At the request of Mr. KENNEDY, the names of the Senator from Connecticut (Mr. DODD), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Nebraska (Mr. HAGEL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Missouri (Mr. TALENT) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. Res. 20, a resolution designating January 2005 as ''National Mentoring Month''.

MEASURES DISCHARGED

S. 45. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 224. A bill to extend the period for COBRA coverage for victims of the terrorist attacks of September 11, 2001; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, one of the greatest domestic challenges facing our country today is the soaring cost of health care. It's a serious problem for millions of families. But when the chief income earner in a family suddenly becomes unemployed, the problem can be critical, and we give a helping hand. We give them the opportunity to continue their coverage through their employer for a reasonable period. Families who lost loved ones on September 11 deserve the same opportunity until they can land on their feet again.

The Continuing Care for Recovering Families Act I am introducing today in the Senate with Senator CORZINE and Senator LAUTENBERG, and Congressman MARKEY is introducing today in the House of Representatives, recognizes that many of the September 11 families are still struggling to recover and we have an obligation to assist them.

Some of the families have found ways to cover their health costs by purchasing private insurance or obtaining grant assistance on their own. For others, employers have agreed to provide coverage. For still other families, however, the safety net has fallen apart, because their coverage has expired under COBRA—the temporary low-cost continuation of coverage available under current Federal law for those who change their job, lose their job or for families that lose their chief income earner through death.

The Continuing Care for Recovering Families Act will give spouses and children of victims of September 11 the ability to purchase or continue to purchase coverage under COBRA indefinitely, as long as they enroll within 120 days after passage of the Act or 120 days after they lose their COBRA coverage. Eligibility for the program would expire only if they become eligible for Medicare.

The families of September 11 have shown great courage and extraordinary resilience. But we still have much more to do to help them on their long and arduous road to recovery, and I hope very much that we can pass this legislation this year. It will only affect a small number of families. But for them, it will make a world of a difference.

By Mr. STEVENS (for himself, Mr. INOUYE, and Ms. MURKOWSKI):

S. 225. A bill to direct the Secretary of the Interior to undertake a program

to reduce the risks from and mitigate the effects of avalanches on recreational users of public land; to the Committee on Energy and Natural Resources.

Mr. STEVENS. Mr. President, today I introduce, with Senators INOUYE and MURKOWSKI, the Federal Land Recreational Visitor Protection Act of 2005.

Across our State of Alaska, Western States, and areas of the Northeast, local governments and businesses struggle each year to remove potential avalanches or recover from the disastrous effects of avalanches.

While such damage can bring hardships to many local communities, none can compare with the loss of a friend or family member. The U.S. averages over 20 deaths a year from avalanches, a majority of which are results of recreational activities in unmitigated avalanche areas. Earlier in January, 3 people were killed in two separate avalanches in northern Idaho and Utah, bringing the total number of people already killed in the U.S. this winter season to 16.

Some States try and set aside money for rescues prior to the winter season, knowing that the resources required to clear all avalanche threats are not at hand.

This bill brings those resources to the entities that need them the most, enabling us to significantly reduce the effects of avalanches on visitors, recreational users, transportation corridors, and our local communities.

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

S. 226. A bill to amend the Public Health Service Act to improve immunization rates by increasing the supply of vaccines; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today, along with my colleague from New York, Senator CLINTON, to introduce the Improved Vaccine Supply Act—a bill that would help ensure that our Nation's public health system has an adequate vaccine supply.

We all know that vaccinations are critical in our efforts to keep our population, particularly children and the elderly, healthy. They are key to protecting the elderly from influenza during flu season and protecting children from contracting polio or the mumps. Vaccinations, inoculations, immunizations—whatever you want to call them—also help lessen the threat of bacterial or viral infections and potential disease outbreaks.

Currently, it is recommended that children receive 12 routine vaccinations against preventable diseases. These vaccinations are given in a series of shots and booster shots by the age of two, with an additional four doses later in life. This ends up being about 16 to 20 doses of vaccines for children.

Any shortage of vaccines is not acceptable, and we should do all we can to prevent any future shortage. As a Senator, and more importantly, as a parent of eight and grandparent of eight, I believe that nothing is more important than the health and safety of our children. While we are not currently experiencing a shortage, we know that the vaccine market is unstable and unpredictable. According to the Centers for Disease Control's National Immunization Program, there were several reasons for the shortages in past years. The CDC concluded and posted on its website that the ''reasons for these shortages were multi-factorial and included companies leaving the vaccine market, manufacturing or production problems, and insufficient stockpiles.''

The CDC did as good a job as it could, considering the vaccine shortages our Nation has faced in past years. The agency's website has posted information about shortages and released revised vaccine schedules to keep our public informed and knowledgeable about vaccination shortages. But, even with the strong efforts of the CDC, we need to work toward preventing a future vaccine shortage. We need a more permanent solution. The bill I am introducing will go a long way toward doing just that.

The bill we are introducing today—the Improved Vaccine Supply Act—would help bring some stability to our fragile vaccine supply. Unlike drug manufacturers, vaccine manufacturers do not have to give notice when they stop making a vaccine, whether the vaccine is withdrawn from the market intentionally or because the manufacturer is simply unable to continue making the vaccine. Essentially, these manufacturers leave the marketplace with no notice and no warning. Most doctors and hospitals—and more importantly parents and older adults—often have no idea that a vaccine is in short supply until they line up for a flu shot or go to the doctor for their child's immunizations.

Our bill would change this. It would require any manufacturer of a vaccine to give a one-year notice of discontinuance. By giving notice, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) would be better able to ensure an adequate vaccine supply for our Nation's population. Additionally, our bill would require all drug and vaccine manufacturers to give notice when they withdraw from the market. This change would ensure that we have a better sense of who is making vaccines and drugs and would allow the CDC and FDA to monitor the manufacturer's production and release of vaccines.

Let me explain why this is important. Vaccines, or biological products, are difficult to develop and manufacture. They are more complex than drugs. Because of this, it takes longer for a biological product to reach the market. For example, a pharmaceutical company that manufactured tetanus vaccine stopped producing it, leaving only one company to produce tetanus vaccine for the entire country. The remaining company increased production to accommodate all of the needs of the United States. Despite this, it still required about 11 months for the vaccine to be ready for release. In other words, it took 11 months for the company to ramp-up production to meet demand. Our bill would create a notification mechanism to capture those drugs and vaccines leaving the market so we can avoid future vaccine and drug shortages.

Our bill also would require the Secretary, acting through the CDC, to develop a plan for the purchase, storage, and rotation of a supply of vaccines sufficient to provide routinely recommended vaccinations for a six-month period for children and adults. Essentially, it would create a framework for the CDC to develop a national vaccine stockpile to ensure that childhood vaccine shortages simply do not occur.

Our children need and deserve timely vaccinations. When childhood vaccinations are in short supply or are unavailable, they do without, living unprotected against disease. That should never happen. The bill we are introducing today is another step toward ensuring that children get the vaccines they need and that they get them at the right time. I urge my colleagues to join me in support of this important public health legislation.

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

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

S. 226

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 ''Improved Vaccine Supply Act''.

SEC. 2. SUPPLY OF VACCINES.

Title XXI of the Public Health Service Act (42 U.S.C. 300aa–1 et seq.) is amended by adding at the end the following:

''Subtitle 3—Adequate Vaccine Supply

''SEC. 2141. SUPPLY OF VACCINES.

''(a) IN GENERAL.—

''(1) PLAN.—Not later than 6 months after the date of enactment of this section, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a plan for the purchase, storage, and rotation of a supply of vaccines sufficient to provide routinely recommended vaccinations for a 6-month period for—

''(A) a national stockpile of vaccines for all children as authorized under section 1928(d)(6) of the Social Security Act (42 U.S.C. 1396s(d)(6)); and

''(B) adults.

''(2) SUPPLY.—The supply of vaccines under paragraph (1) shall—

''(A) include all vaccines routinely recommended for children by the Advisory Committee on Immunization Practices; and

''(B) include all vaccines routinely recommended for adults by the Advisory Committee on Immunization Practices.

''(3) SUPPLY AUTHORITY.—The Secretary shall carry out—

''(A) paragraph (2)(A) using the authority provided for under section 1928(d)(6) of the

Social Security Act (42 U.S.C. 1396s(d)(6)); and

''(B) paragraph (2)(B) using—

''(i) the authority provided for under section 317; and

''(ii) any other authority relating to the vaccines described in such paragraph.

''(b) SUBMISSION OF PLAN.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit the plan developed under subsection (a) to—

''(A) the Committee on Health, Education, Labor, and Pensions of the Senate;

''(B) the Committee on Finance of the Senate; and

''(C) the Committee on Energy and Commerce of the House of Representatives.

''(2) INCLUSIONS.—The plan shall include a discussion of the considerations that formed—

''(A) the basis for the plan; and

''(B) the prioritization of the schedule for purchasing vaccines set forth in the plan.

''(c) IMPLEMENTATION OF THE PLAN.—Not later than September 30, 2007, the Secretary shall fully implement the plan developed under subsection (a).

''(d) NOTICE.—

''(1) IN GENERAL.—For the purposes of maintaining and administering the supply of vaccines described under subsection (a), the Secretary shall require by contract that the manufacturer of a vaccine included in such supply provide not less than 1 year notice to the Secretary of a discontinuance of the manufacture of the vaccine, or of other factors, that may prevent the manufacturer from providing vaccines pursuant to an arrangement made to carry out this section.

''(2) REDUCTION OF PERIOD OF NOTICE.—The notification period required under paragraph (1) may be reduced if the manufacturer certifies to the Secretary that good cause exists for reduction, under the conditions described in section 506C(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356c).

''(e) PROCEEDS.—Any proceeds received by the Secretary from the sale of vaccines contained in the supply maintained pursuant to this section, shall be available to the Secretary for the purpose of purchasing additional vaccines for the supply. Such proceeds shall remain available until expended.

''(f) ONGOING REPORTS.—

''(1) IN GENERAL.—Not later than 2 years after submitting the plan pursuant to subsection (b), and periodically thereafter, the Secretary shall submit a report to the Committees identified in subsection (b)(1) that—

''(A) details the progress made in implementing the plan developed under subsection (a); and

''(B) notes impediments, if any, to implementing the plan developed under subsection (a).

''(2) RECOMMENDATION.—The Secretary shall include in the first of such reports required under paragraph (1)—

''(A) a recommendation as to whether the vaccine supply should be extended beyond the 6-month period provided in subsection (a); and

''(B) a discussion of the considerations that formed the recommendation under subparagraph (A).

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2011.''.

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

S. 229. A bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am pleased to introduce the Albuquerque Biological Park Title Clarification Act with my colleague Senator DOMENICI. This bill, which passed the Senate in the 108th Congress, is necessary to assist the City of Albuquerque, NM clear title to two parcels of land located along the Rio Grande. If title is cleared, the City will be able to move forward with its plans to improve the properties as part of a Biological Park Project, a city funded initiative to create a premier environmental educational center for its citizens, and the entire State of New Mexico.

The Biological Park Project has been in the works since 1987 when the City began to develop an aquarium and botanic garden along the banks of the Rio Grande. Those facilities constitute just a portion of the overall project. As part of this effort, in 1997, the City purchased two properties from the Middle Rio Grande Conservancy District (MRGCD) for $3,875,000. The first property, Tingley Beach, had been leased by the City from MRGCD since 1931 and used for public park purposes. The second property, San Gabriel Park, had been leased by the City since 1963, and also used for public park purposes.

In the year 2000, the City's plans were interrupted when the U.S. Bureau of Reclamation asserted that in 1953, it had acquired ownership of all of MRGCD's property associated with the Middle Rio Grande Project. The United States' assertion called into question the validity of the 1997 transaction between the City and MRGCD. Both MRGCD and the City dispute the United States' claim of ownership.

This dispute is unnecessarily delaying and complicating the City's progress in developing the Biological Park Project. If the matter is simply left to litigation, the delay will be indefinite. Reclamation has already determined that the two properties are surplus to the needs of the Middle Rio Grande Project. Moreover, the record indicates that Reclamation had once considered releasing its interest in the properties for $1.00 each. Obviously, the federal interest in these properties is low while the local interest is high. This bill is narrowly tailored to address this local interest, affecting only the two properties at issue. The general dispute concerning title to project works is left for the courts to decide.

I hope my colleagues will work with me to help resolve this issue. While much of what we do here in the Congress is complex and time-consuming work, we should also have the ability to move quickly when necessary and appropriate to solve local problems caused by federal actions. I therefore urge my colleagues to support this legislation.

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

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

S. 229

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 ''Albuquerque Biological Park Title Clarification Act''.

SEC. 2. PURPOSE.

The purpose of this Act is to direct the Secretary of the Interior to issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City's title to these lands.

SEC. 3. DEFINITIONS.

In this Act:

(1) CITY.—The term ''City'' means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms ''Middle Rio Grande Conservancy District'' and ''MRGCD'' mean a political subdivision of the State of New Mexico, created in 1925 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term ''Middle Rio Grande Project'' means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1175) and the Flood Control Act of 1950 (Public Law 81–516; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term ''San Gabriel Park'' means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term ''Tingley Beach'' means the tract of land containing 25.2005 acres, more or less, situated within Section 13 and Section 24, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 4. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) TIMING.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) NO ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 5. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 4, nothing in this Act shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) ONGOING LITIGATION.—Nothing contained in this Act shall be construed or utilized to affect or otherwise interfere with any position set forth by any party in the

lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99–1320 JP/RLP–ACE, entitled Rio Grande Silvery Minnow v. John W. Keys, III, concerning the right, title, or interest in and to any property associated with the Middle Rio Grande Project.

By Mr. ROBERTS:

S. 233. A bill to increase the supply of quality child care; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROBERTS. Mr. President, I am pleased and honored today to introduce the ''Caring for Children Act''—a bill designed to help meet the child care challenges facing families, child care providers and small businesses around the Nation.

Child care, in the home when possible and outside the home when both parents work, goes right to the heart of keeping families strong. Unfortunately, finding quality, affordable child care is one of the most pressing problems for families in Kansas and around the country. It is estimated that quality child care can cost as much or more than college tuition in some areas.

The ''Caring for Children Act'' takes the first steps in addressing this challenge through a responsible approach. This legislation expands child care opportunities without unnecessary government intervention or mandates. This legislation will help working families who want quality child care for their children, child care providers who aim to provide the highest quality of care, and small businesses who currently may not have the resources to provide child care for their employees.

The ''Caring for Children Act'' recognizes that small businesses play a critical role in providing child care options to millions of working parents. Unfortunately, small businesses generally do not have the resources required to start up and support a child care center. This legislation includes a short-term, flexible grant program to encourage small businesses to work together or with established local child care organizations to provide child care services for employees. This program is more of a demonstration project that will sunset at the end of five years. In the meantime, small businesses will be eligible for grants up to $250,000 for start-up costs, training, scholarships, or other related activities. Businesses, however, will be required to match Federal funds to encourage self-sustaining facilities well into the future. Business must continue to meet State quality and health standards. In essence, this grant program takes the necessary steps to ensuring small businesses and other local organizations are able to work together to provide child care for employees.

The ''Caring for Children Act'' also addresses another key component of quality child care: child care training. My bill creates a new grant program to allow organizations to develop and operate distance learning child care training infrastructures and to develop model technology-based training courses for child care providers. These infrastructures and courses will enable child care providers to receive the training, education and support they need to improve the quality of child care. The ''Caring for Children Act'' encourages grantees to work with secondary schools, institutions of higher education, state and local governments, and child care organizations to promote networking, information sharing, and resource sharing. These grants will be targeted to those areas with the fewest training opportunities for child care providers.

Child care is an issue that impacts each and every one of us. While parents continue to struggle to meet the constant demand of work and family, we must continue to do our part to expand child care options and protect our nation's most valuable resource, our children. I look forward to working with all of my colleagues in this important effort.

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

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

S. 233

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 ''Caring for Children Act''.

TITLE I—CHILD CARE TRAINING THROUGH DISTANCE LEARNING

SEC. 101. GRANTS FOR THE DEVELOPMENT OF A CHILD CARE TRAINING INFRASTRUCTURE.

(a) AUTHORITY TO AWARD GRANTS.—The Secretary of Health and Human Services shall award grants to eligible entities to develop distance learning child care training technology infrastructures and to develop model technology-based training courses for child care providers and child care workers, to be provided through distance learning programs made available through the infrastructure. The Secretary shall, to the maximum extent possible, ensure that such grants are awarded in those regions of the United States with the fewest training opportunities for child care providers.

(b) ELIGIBILITY REQUIREMENTS.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) develop the technological and logistical aspects of the infrastructure described in this section and have the capability of implementing and maintaining the infrastructure;

(2) to the maximum extent possible, develop partnerships with secondary schools, institutions of higher education, State and local government agencies, and private child care organizations for the purpose of sharing equipment, technical assistance, and other technological resources, including—

(A) developing sites from which individuals may access the training;

(B) converting standard child care training courses to programs for distance learning; and

(C) promoting ongoing networking among program participants; and

(3) develop a mechanism for participants to—

(A) evaluate the effectiveness of the infrastructure, including the availability and affordability of the infrastructure, and the training offered through the infrastructure; and

(B) make recommendations for improvements to the infrastructure.

(c) APPLICATION.—To be eligible to receive a grant under subsection (a), an entity shall submit an application to the Secretary at such time and in such manner as the Secretary may require, and that includes—

(1) a description of the partnership organizations through which the distance learning programs will be made available;

(2) the capacity of the infrastructure in terms of the number and type of distance learning programs that will be made available;

(3) the expected number of individuals to participate in the distance learning programs; and

(4) such additional information as the Secretary may require.

(d) LIMITATION ON FEES.—No entity receiving a grant under this section may collect fees from an individual for participation in a distance learning program funded in whole or in part under this section that exceed the pro rata share of the amount expended by the entity to provide materials for the program and to develop, implement, and maintain the infrastructure (minus the amount of the grant awarded under this section).

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as requiring a child care provider to subscribe to or complete a distance learning program made available under this section.

SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $50,000,000 for each of fiscal years 2006 through 2010.

TITLE II—REMOVAL OF BARRIERS TO INCREASING THE SUPPLY OF QUALITY CHILD CARE

SEC. 201. SMALL BUSINESS CHILD CARE GRANT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall establish a program to award grants to States, on a competitive basis, to assist States in providing funds to encourage the establishment and operation of employer operated child care programs.

(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the funds required under subsection (e) will be provided.

(c) AMOUNT OF GRANT.—The Secretary shall determine the amount of a grant to a State under this section based on the population of the State as compared to the population of all States receiving grants under this section.

(d) USE OF FUNDS.—

(1) IN GENERAL.—A State shall use amounts provided under a grant awarded under this section to provide assistance to small businesses located in the State to enable the small businesses to establish and operate child care programs. Such assistance may include—

(A) technical assistance in the establishment of a child care program;

(B) assistance for the startup costs related to a child care program;

(C) assistance for the training of child care providers;

(D) scholarships for low-income wage earners;

(E) the provision of services to care for sick children or to provide care to school aged children;

(F) the entering into of contracts with local resource and referral or local health departments;

(G) assistance for care for children with disabilities; or

(H) assistance for any other activity determined appropriate by the State.

(2) APPLICATION.—To be eligible to receive assistance from a State under this section, a small business shall prepare and submit to the State an application at such time, in such manner, and containing such information as the State may require.

(3) PREFERENCE.—

(A) IN GENERAL.—In providing assistance under this section, a State shall give priority to applicants that desire to form a consortium to provide child care in a geographic area within the State where such care is not generally available or accessible.

(B) CONSORTIUM.—For purposes of subparagraph (A), a consortium shall be made up of 2 or more entities that may include businesses, nonprofit agencies or organizations, local governments, or other appropriate entities.

(4) LIMITATION.—With respect to grant funds received under this section, a State may not provide in excess of $250,000 in assistance from such funds to any single applicant.

(e) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section a State shall provide assurances to the Secretary that, with respect to the costs to be incurred by an entity receiving assistance in carrying out activities under this section, the entity will make available (directly or through donations from public or private entities) non-Federal contributions to such costs in an amount equal to—

(1) for the first fiscal year in which the entity receives such assistance, not less than 50 percent of such costs ($1 for each $1 of assistance provided to the entity under the grant);

(2) for the second fiscal year in which the entity receives such assistance, not less than 66⅔ percent of such costs ($2 for each $1 of assistance provided to the entity under the grant); and

(3) for the third fiscal year in which the entity receives such assistance, not less than 75 percent of such costs ($3 for each $1 of assistance provided to the entity under the grant).

(f) REQUIREMENTS OF PROVIDERS.—To be eligible to receive assistance under a grant awarded under this section a child care provider shall comply with all applicable State and local licensing and regulatory requirements and all applicable health and safety standards in effect in the State.

(g) STATE-LEVEL ACTIVITIES.—A State may not retain more than 3 percent of funds for State administration and other State-level activities.

(h) ADMINISTRATION.—

(1) STATE RESPONSIBILITY.—A State shall have responsibility for administering a grant awarded for the State under this section and for monitoring entities that receive assistance under such grant.

(2) AUDITS.—A State shall require each entity receiving assistance under the grant awarded under this section to conduct an annual audit with respect to the activities of the entity. Such audits shall be submitted to the State.

(3) MISUSE OF FUNDS.—

(A) REPAYMENT.—If the State determines, through an audit or otherwise, that an entity receiving assistance under a grant awarded under this section has misused the assistance, the State shall notify the Secretary of the misuse. The Secretary, upon such a notification, may seek from such an entity the repayment of an amount equal to the amount of any such misused assistance plus interest.

(B) APPEALS PROCESS.—The Secretary shall by regulation provide for an appeals process with respect to repayments under this paragraph.

(i) REPORTING REQUIREMENTS.—

(1) 2-YEAR STUDY.—

(A) IN GENERAL.—Not later than 2 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine—

(i) the capacity of entities to meet the child care needs of communities within States;

(ii) the kinds of partnerships that are being formed with respect to child care at the local level to carry out programs funded under this section; and

(iii) who is using the programs funded under this section and the income levels of such individuals.

(B) REPORT.—Not later than 28 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

(2) 4-YEAR STUDY.—

(A) IN GENERAL.—Not later than 4 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine the number of child care facilities funded through entities that received assistance through a grant awarded under this section that remain in operation and the extent to which such facilities are meeting the child care needs of the individuals served by such facilities.

(B) REPORT.—Not later than 52 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

(j) DEFINITION.—In this section, the term ''small business'' means an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

(k) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for the period of fiscal years 2006 through 2010.

(2) EVALUATIONS AND ADMINISTRATION.—With respect to the total amount appropriated for such period in accordance with this subsection, not more than $2,500,000 of that amount may be used for expenditures related to conducting evaluations required under, and the administration of, this section.

(l) TERMINATION OF PROGRAM.—The program established under subsection (a) shall terminate on September 30, 2011.

By Mr. NELSON of Nebraska (for himself, Ms. COLLINS, Ms. CANTWELL, and Mrs. MURRAY):

S. 236. A bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals; to the Committee on Finance.

Mr. NELSON of Nebraska. Mr. President. Today, I introduce legislation that will overturn a new regulation that is putting critical access hospitals (CAH) at risk by arbitrarily lowering the Medicare reimbursement for laboratory services. Sixty rural hospitals in Nebraska will be negatively impacted unless this regulation is reversed.

This legislation would repeal a Center for Medicare and Medicaid Services' (CMS) regulation that would prohibit critical access hospitals from being reimbursed at-cost for laboratory services, unless patients are ''physically present in a critical access hospital'' when laboratory specimens are collected. Many CAHs provide laboratory services in rural health clinics (RHCs) and nursing homes in smaller, neighboring communities, as well as in home-health settings; however, the elimination of cost-based reimbursement may make it prohibitive for them to continue offering off-site laboratory testing. In short, under the new regulation, lab services would not be reimbursed by CMS unless the patient is at the facility where testing will occur.

This change jeopardizes rural Americans' access to care by imposing an additional burden on the frail elderly by requiring them to visit the hospital to get simple lab tests done. The additional time and expense incurred by the patient is unnecessary if the CAR is willing and able to conduct tests at the point of patient care and transport it back to the hospital for analysis.

Congress created the CAR program in 1997 to ensure that those in isolated, rural communities have access to health care. To protect the viability of these hospitals, often a community's only source of vital health care services, Congress established cost-based reimbursement for Medicare inpatient and outpatient services—regardless of where the services are provided. The new regulation would fundamentally alter this well-established practice.

We have tried to work with CMS to change the rule. In November of 2003, I was joined by 28 Senators in a bipartisan letter to the Administrator of CMS asking for his assistance in constructing a rule that does not penalize CAHs for offering off-site laboratory services. Unfortunately, CMS responded that the rule would stay intact.

I am pleased to be joined in this effort by Senator SUSAN COLLINS. Senator COLLINS has been a strong advocate for rural health care, and I look forward to working together on this legislation.

The Nebraska critical access hospitals affected by the regulation are:

Harlan County Health System in Alma

Fillmore County Hospital in Geneva

Pawnee County Memorial Hospital in Pawnee City

Niobrara Valley Hospital Corporation in Lynch

Thayer County Health Services in Hebron

Kimball County Hospital in Kimball

Kearney County Health Services/Hospital in Minden

Saunders County Health Services in Wahoo

Henderson Health Care Services in Henderson

Community Memorial Hospital in Syracuse
Garden County Hospital & Nursing Home in Oshkosh
Franklin County Memorial Hospital in Franklin
Genoa Community Hospital in Genoa
Gothenburg Memorial Hospital in Gothenburg
Annie Jeffrey Memorial County Health Center in Osceola
Brodstone Memorial Nuckolls County Hospital in Superior
Webster County Community Hospital in Red Cloud
Tilden Community Hospital in Tilden
Morrill County Community Hospital in Bridgeport
Jefferson Community Health Center in Fairbury
Memorial Hospital in Aurora
Oakland Memorial Hospital in Oakland
St. Francis Memorial Hospital in West Point
Alegent Health Memorial Hospital in Schuyler
Nemaha County Hospital in Auburn
Brown County Hospital in Ainsworth
Antelope Memorial Hospital in Neligh
Cozad Community Hospital in Cozad
Litzenberg Memorial County Hospital in Central City
Avera St. Anthony's Hospital in O'Neill
Warren Memorial Hospital in Friend
Creighton Area Health Services in Creighton
Butler County Health Care Center in David City
Rock County Hospital in Bassett
Boone County Health Center in Albion
Callaway District Hospital in Callaway
York General Hospital in York
Howard County Community Hospital in St. Paul
Memorial Hospital CAH in Seward
Dundy County Hospital in Benkelman
Chadron Community Hospital Health Services in Chadron
St. Mary's Hospital in Nebraska City
West Holt Memorial Hospital in Atkinson
Cherry County Hospital in Valentine
Providence Medical Center in Wayne
Plainview Public Hospital in Plainview
Osmond General Hospital in Osmond
Tri Valley Health System in Cambridge
Pender Community Hospital in Pender
Johnson County Hospital in Tecumseh
Chase County Community Hospital in Imperial
Community Medical Center in Falls City
Valley County Hospital in Ord
Crete Area Medical Center in Crete
Ogallala Community Hospital in Ogallala
Perkins County Health Services in Grant
Memorial Health Center in Sidney
Gordon Memorial Hospital District in Gordon
Memorial Community Hospital in Blair
Box Butte General Hospital in Alliance

By Mr. LAUTENBERG:

S. 237. A bill to amend title 23, United States Code, to ensure that certain states remain eligible for Federal highway funds; to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Mr. President, I rise to introduce a bill to correct a serious problem in Federal law which prevents States like New Jersey from receiving vital Federal highway funds under certain conditions.

On September 22, 2004, former New Jersey Governor James McGreevey issued an Executive Order that prohibited the State from entering into certain contracts. Governor McGreevey took this step to ensure fairness and transparency in the contracting process, and under current Federal laws, our State is being punished for it.

Bush administration officials interpreted Federal law as prohibiting this type of action by New Jersey and consequently withheld authorization of Federal funding for highway projects in our State, putting some $250 million in highway projects at risk.

I worked with Department of Transportation Secretary Norman Mineta in an attempt to resolve this problem quickly. Ultimately, Acting Governor Richard Codey reluctantly suspended the part of the Executive Order causing the problem. But since that's not really a permanent solution, I am introducing this legislation today.

New Jersey's transportation infrastructure is vital to millions of travelers and the entire East Coast economy. It is estimated that some 70 billion vehicle miles are traveled in New Jersey each year, but only 6 million drivers are licensed in our State. In addition, projected increases in port traffic will put 80 percent more trucks on the roads in the next 15 years, which will exacerbate congestion and continue to tax our infrastructure.

In short, I believe that New Jersey's good intentions should not cost our State the Federal highway funding we need so desperately.

I thank my colleague and friend Senator CORZINE for co-sponsoring this legislation, and I look forward to working with my colleagues in getting it enacted.

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

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

S. 237

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 ''Pay to Play Reform Protection Act''.

SEC. 2. PAY TO PLAY REFORM.

Section 112 of title 23, United States Code, is amended by adding at the end the following:

''(h) CONSTRUCTION.—Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount of money an individual who is doing business with a State agency for a Federal-aid highway project may contribute to a political campaign.''.

By Ms. SNOWE (for herself, Mr. WYDEN, Mr. MCCAIN, Mrs. FEINSTEIN, and Mr. FEINGOLD):

S. 239. A bill to reduce the costs of prescription drugs for medicare beneficiaries, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, Senator WYDEN and I broke new ground together when we introduced the first bipartisan Medicare Prescription drug bill known as SPICE back in 1999. And after Congress passed the historic Medicare Modernization Act of 2003, Senator WYDEN and I authored legislation aimed at ensuring long term value of the drug benefit to seniors. Today we are joined again by Senator FEINSTEIN, who has been committed with us to forging a bipartisan effort to do what we must today—to move beyond offering a benefit and ensure that we meet our obligation to address affordability.

When we consider both a recent ten year cost estimate of over $534 billion for the prescription drug benefit, and drug price increases which have rapidly outpaced inflation and earnings, we could see the benefit to seniors depreciated—and the cost to the Federal Government increased. So today we introduce The Medicare Enhancements for Needed Drugs Act of 2005, MEND, today to manage costs, and assure seniors will receive better value for their dollar.

This bill provides both better consumer information to help beneficiaries and the negotiation power to assure that the power of millions of seniors will result in competitive pricing. That is why two of our colleagues—Senators MCCAIN and FEINGOLD—have now joined us in this effort.

Ours is a simple approach informed by a ''healthy dosage'' of common sense. It simply makes no sense to cut off the ability of the HHS Secretary—the individual who is responsible for the success of this benefit—from negotiating on behalf of beneficiaries. That's why our legislation repeals the ''noninterference provision'' of the prescription drug bill and authorizes the Secretary of Health and Human Services to participate in negotiations on drug prices. Last month when Secretary Thompson announced his departure from HHS, he described several issues of critical concern—one of these was that he had been barred from negotiating on behalf of beneficiaries. He noted, ''I would like to have had the opportunity to negotiate''. And for good reason! The Congressional Budget

Office has confirmed that this negotiation authority can help us realize savings, particularly for drugs that lack significant competition.

When Senator GREGG recently queried Secretary Leavitt about keeping the cost of the Part D program within the original $400 billion budget, and the Secretary asserted that ''It's my practice as a manager to act within my budget''. That will require competition, so I ask why wouldn't we employ negotiation to do what it does best—drive costs down? I asked Secretary Leavitt about negotiation at his confirmation hearing in the Finance Committee and he told me, ''I know little about negotiation authority, but there are times when the national government should play a role''. Well, that time is now. Senator WYDEN and I have received our first report on drug price trends from the GAO, and the news isn't good. Since 2000, the increase in prescription drug prices has increase at two to three times the rate of inflation. And worse, we found the rate spiked in 2002, just as we were working to create a prescription drug benefit. It's no wonder that the Congressional Budget Office projects an annual increase of about 8.5 percent in costs, most of which can be attributed to the rise in prices. But we can address this problem, and avoid depreciating the value of this long sought benefit.

To do so you must do more than simply end the prohibition on the Secretary negotiating, you must do more than simply granting permissive authority, you must actually ensure that when needed, the Secretary will negotiate.

So our legislation will not only empower the HHS Secretary to negotiate but, under two circumstances, requires it. For those beneficiaries who do not have access to two prescription drug plans, the Secretary steps in with a fallback plan, and this plan must be competitive—so the Secretary must assure that he negotiates on behalf of those beneficiaries. In addition, the Secretary must be responsive to the needs of the plan providers. When a manufacturer simply is not inclined to negotiate—as may occur when competition for a drug is lacking—then the Secretary must respond when plans request his assistance in negotiations.

Some will say this will compel excessive involvement by the Secretary, but the truth is quite to the contrary. Plans will compete to gain advantage, and it is when they are stymied and cannot achieve reasonable discounts that they will call upon the Secretary. CBO foresaw one such situation—when a drug lacks significant competition—and those are among our most expensive drugs!

The buying power of millions of seniors should produce substantial savings, but at the same time, competitive plans won't help if seniors cannot identify which plan is right for them.

Senator WYDEN and I believe we must arm beneficiaries with information. Our bill requires GAO to track not only the price of drugs under the Medicare program, but calls for that price to be compared to the price negotiated by the VA, DOD and other privately run systems. We will have a measure of how well the seniors are being served.

This bill will also help seniors determine which Medicare plan offers the most savings by requiring that beginning in 2007 the Centers for Medicare and Medicaid Services will determine the savings received from each plan by the average Medicare beneficiary, using a market basket of commonly-used drugs. This will allow seniors to make the proverbial ''apples to apples'' comparison. This information will be shared with all beneficiaries during the annual enrollment period each fall, and will be a great help as a starting point for seniors to compare plans.

Our legislation will make annual the report Senator WYDEN and I first requested following passage of the prescription drug bill in 2003. We asked the GAO to review changes in drug prices from 2000 through 2003, focusing on the drugs most likely to be used by seniors, and the results are in: Prescription drug prices have increased at two to three times the rate of inflation.

Finally, many advocates and seniors alike have raised questions about the restriction of Medigap policies under the new Part D benefit. The prohibition of the sale of new Medigap policies which include prescription drug coverage has prompted the need for a re-examination of the role of Medigap plans. So we have directed the Secretary to work with the National Association of Insurance Commissioners to conduct a review of the changes to the Medigap policies and to evaluate the impact on Medicare beneficiaries. It is an important step in looking at the future of Medigap plans. With this report in hand, we will have the information necessary to make wise adjustments.

Some say we don't need to act now. But we have seen drug price increases which are driving costs upwards—contributing to the estimated 8.5 percent annual increases in costs projected by CBO. We simply cannot wait until 2006 to address the issue of drug prices. This bill provides beneficiaries and our government with the information and tools necessary to achieve access to low-cost prescription drugs. I urge my colleagues to join me in support of this bill so that we can pass it quickly.

Mr. WYDEN. Mr. President, Senator SNOWE and I are once again teaming up to work on a bipartisan commonsense proposal to help America's seniors receive affordable prescription drugs. Our bill, ''The Medicare Enhancement for Needed Drugs Act'' or ''MEND Act'' focuses on cost containment.

At our request, the U.S. Government Accountability Office (GAO) recently reviewed drug cost trends. For 77 prescription drugs frequently used by seniors on Medicare the usual and customary price increased 21.8 percent from January 2000 through June 2004, a 4.6 percent average annual rate of increase. They also found that the process for the brand drugs increased 26.4 percent for that same time period whereas prices for generic drugs increased 8.3 percent. We need to make sure that Medicare has every weapon in its arsenal to assure seniors and Medicare get the best deal possible on prescription drug prices.

One of the most important tools for Medicare to use to assure better prescription drug prices for seniors is bargaining power. That tool is missing from the legislation Congress passed in 2003. The legislation that Senator SNOWE and I are introducing today, the MEND Act, would provide the Secretary of Health and Human Services that tool. As responsible stewards of the taxpayers' money, Congress must provide Medicare all the tools, including bargaining power, in its cost containment arsenal.

This concept was endorsed by the outgoing Secretary of Health and Human Services, Tommy Thompson. The Congressional Budget Office in a letter to me last March stated that striking the so-called ''non interference'' provision in the Medicare Prescription Drug Improvement and Modernization Act could provide opportunities for savings.

In addition to providing the Secretary with bargaining power, the MEND Act will require the Secretary to negotiate on behalf of what are known as ''fall back'' plans, those plans that are provided when there is no choice of a drug plan and the company administering the benefit is not at risk. In addition, if any plan asks the Secretary for assistance in negotiations for any covered drug, the Secretary must assist the plan. Lower drug prices should mean lower premiums; lower out of pocket costs and a better benefit.

America's seniors are savvy and they will shop around for a plan that is going to provide them the best deal on prescriptions. That is why the MEND Act also requires Medicare to provide a comparison of how much a plan is saving seniors on the cost of the most commonly used drugs. Giving seniors more control over their health care and health care dollars will also help keep costs down.

Mrs. FEINSTEIN. Mr. President, I rise today to join my colleagues Senator SNOWE, Senator WYDEN and Senator MCCAIN in introducing the bipartisan Medicare Enhancement for Needed Drugs, MEND, Act of 2005. This legislation is an important step toward controlling the spiraling cost of prescription drugs for America's seniors.

The MEND Act addresses what I saw as a major weakness of the Medicare Modernization Act of 2003 when I voted for the bill. The Medicare Modernization Act offers an opportunity for the Federal Government via the Secretary of Health and Human Services to harness its bulk purchasing power to deliver lower drug prices for our seniors.

However, the Medicare bill prohibits the HHS Secretary from doing just that.

I have said several times that I would work to see that this prohibition on the HHS Secretary from negotiating with drug manufacturers be stricken and I was pleased that Secretary Tommy Thompson, upon announcing his departure as HHS Secretary, acknowledged publicly that he sought the negotiating power that this legislation provides. Secretary Thompson said, ''I would have liked to have had the opportunity to negotiate.''

First and foremost the bill strikes the prohibition language in the Medicare bill, also called the noninterference provision.

I strongly believe that the HHS Secretary should be given the authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate prices with manufacturers of prescription drugs to ensure that beneficiaries pay the lowest possible price for their prescription drug plans.

The CBO has told us that the effect of striking the ''noninterference'' provision would have a ''negligible effect'' on federal spending. CBO's conclusion is based on their prediction that private plans will be able to obtain savings that will be greater than what the Secretary will be able to achieve and that simply striking this provision does not ensure that the Secretary will use the negotiation authority.

Meanwhile, our seniors are being given no guarantee that private plan competition will mean lower drug prices for them. So while CBO makes this conclusion that private market forces will bring about savings, the federal government is forced to sit on the sidelines, unable to leverage its purchasing power to negotiate lower drug prices. The Federal Government cannot even participate in negotiations for prescription drug plans for which it assumes the risk.

That is simply wrong and the MEND Act corrects this flaw in the Medicare bill.

Second, if a future HHS Secretary does not agree with Secretary Thompson's view that he be given the opportunity to negotiate with drug manufacturers, there must be circumstances under which the Secretary is required by law to negotiate.

The MEND Act mandates two scenarios under which the Secretary must negotiate with manufacturers. First, the Secretary must negotiate with manufacturers of covered Part D drugs for the fallback prescription drug plan.

The ''fallback'' plan is a guaranteed drug benefit to beneficiaries living in areas where only one private plan, or none, shows up. In areas where a ''fallback'' prescription drug plan is triggered, the federal government must offer the standard drug benefit and assume performance risk. However, the Federal Government does not have a say in the prices manufacturers charge them in the ''fallback.''

To ensure that the Federal Government achieves the lowest available price for enrollees in a ''fallback'' plan, the MEND Act requires that the Secretary negotiate drug prices in such plans.

The MEND Act also requires the Secretary to participate in negotiations upon the request of an approved prescription drug plan or Medicare Advantage prescription drug plan.

If the untested theory that private plans can achieve larger drug price discounts than the Secretary could negotiate proves to be false because the smaller insurers in the private market cannot achieve the savings larger, more established companies can, a company can petition the Secretary to negotiate with drug manufacturers on their behalf.

So that seniors can make an ''apples to apples'' comparison when determining which drug plan offers them the most competitive drug prices, the bill requires that the Secretary of HHS determine the average aggregate beneficiary costs and savings basic prescription drug plans are able to achieve to better inform seniors about which plan might suit them best.

I have heard concerns raised by many of my constituents about the impact the Medicare bill will have on their Medigap plans. This bill directs the HHS Secretary to work with the National Association of Insurance Commissioners to conduct a review of the changes to the Medigap policies in the new drug benefit for the purpose of evaluating its impact on Medicare beneficiaries.

Lastly, the bill requires GAO to conduct a review of the retail cost of prescription drugs in the U.S. during 2000 through 2003 with an emphasis on the prescription drugs most utilized for individuals age 65 or older. Subsequent reviews will be required annually through 2007.

And, it requires GAO to conduct an annual study that compares the average retail cost in the U.S. for each of the 20 most utilized prescription drugs for individuals 65 or older with the average price at which private health plans acquire each such drug, the average price at which the Department of Defense and Veterans Administration each acquire such drug, and the average negotiated price for each such drug that eligible beneficiaries enrolled in a prescription drug plan under Part D of Medicare pay.

As someone who voted for the Medicare bill and has seen the cost estimate of that bill go from $400 billion to $534 billion and someone who is very concerned about the growth of entitlement spending, I believe that this bill will shed light on one of the big drivers of health care costs, the cost of prescription drugs.

CBO projects that Americans over 65 will spend $1.8 trillion on prescription drugs over the next ten years. Recent studies of U.S. and Canadian drug-price comparisons show that, on average, prices charged by manufacturers, wholesalers, and retailers were higher in the U.S., most recently by about 70 percent.

For example, an American consumer pays $62.99 for a 30-day supply of the popular cholesterol-lowering drug Lipitor. The same consumer in Canada is paying $35.42. For Prevacid, used to treat acid reflux, an American consumer pays $120.99 for a 30-day supply whereas a Canadian consumer pays $44.27.

If we do not address the exorbitant costs of prescription drugs in this country today, we threaten the viability of programs like Medicare for future generations. I am pleased to join Senators SNOWE, WYDEN and MCCAIN in the fight for lower prescription drug prices for our seniors.

I urge my colleagues to join me in supporting this important legislation.

By Mr. KERRY (for himself, Mr. LEAHY, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. DURBIN, and Ms. STABENOW):

S. 240. A bill to mend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, the continuing activation of military reservists to serve in Iraq and the war on terror has imposed a tremendous burden on many of our country's small businesses, their employees and their employees' families. Too many small businesses, when their employees are asked to leave their jobs and serve the Nation, are unable to continue operating successfully and face severe financial difficulties, even bankruptcy. At the same time, more than 40 percent of military reservists and National Guard members suffer a pay cut when they're called to defend our Nation. Most large businesses have the resources to provide supplemental income to resist employees called up for active duty and to replace them with a temporary employee. However, too many small businesses are unable to provide this assistance (or temporarily replace the employee called up to active duty. I believe the Federal Government must take action to help small businesses weather the loss of an employee to active duty and protect small business employees and their families from suffering unnecessary financial hardship to serve our Nation. That is why I am again introducing legislation that will provide an immediate tax credit assist both military reservists who are called to active duty and the small businesses who must endure their absence.

The Small Business Military Reservist Tax Credit Act that I am introducing today will provide immediate

help to affected small businesses through a Federal income tax credit and a reduced withholding requirement to help pay the difference in salary for a reservist called up to active duty and the cost of temporarily replacing that employee while he or she is serving our Nation. Specifically, the bill will provide a tax credit of up to $21,000 to any very small business, defined as any business with up to 50 employees, whose employee has been called up for active duty. Up to $15,000 for businesses that pay any difference in salary for the activated reservist and up to an additional $6,000 for the business to offset the cost of hiring a temporary replacement. For small manufacturers with up to 100 employees, the bill will provide a tax credit of up to $30,000, up to $20,000 for small manufacturers that pay all or part of the difference in salary for the reservist called to duty and up to $10,000 for small manufacturers to offset the cost of hiring a temporary replacement. This tax credit is critically necessary if we are to immediately help struggling entrepreneurs keep their small businesses running after the loss of an employee to temporary military service. Too many American small manufacturers are already facing a difficult economy and strong international competition. This legislation provides higher thresholds for small manufacturers because they need greater help and they employ more technical workers who typically command higher salaries and are more difficult to replace. It will also help cushion the financial cost of being a citizen solder for our reservists.

To fight our wars and to meet our military responsibilities, the United States supplements its regular, standing military with reservists, citizen soldiers who serve nobly. Since 1973, the United States has built an all-volunteer military of which reservists are an essential part. Our reservists are much more than weekend warriors. When they are called to active duty, they are an essential ingredient of any long-term or significant deployment of American forces. Everyone knows the contributions our reservists have made in the Army, Navy, Air Force, Marines and Coast Guard. They have been serving our country with distinction and pride for many years and should not be penalized financially for their honorable service. The use of reservists is a significant way to reduce the costs of maintaining a standing army, and those costs, in lieu of having a critical reservist component, are far higher than the cost of providing the small, targeted tax credit offered by this legislation.

Reservists have become a vital component of U.S. forces in Iraq and the war on terror. On September 14, 2001, President Bush issued Executive Order 13223 authorizing the activation of up to 1 million military reservists for up to 2 years of active duty. Since October 2002, there has been a presidentially approved ceiling of 300,000 on the number of reservists that can be on duty at anyone time. Some 475,000 reserves have been called up cumulatively since the issuance of the original Executive Order. Today, there are about 193,458 reserves on active duty in the war against terrorism. Of the approximately 150,000 troops serving in Iraq, 40 percent are reserves. This number is expected to increase to approximately 50 percent in the near future as current troop deployments mobilize.

Earlier this month, published reports showed that Lt. Gen. James R. Helmly, the Commander of the Reserve, has told Army Chief of Staff General Peter J. Schoomaker that the burdens placed on military reservists since the September 11, 2001 attacks, combined with dysfunctional Pentagon policies, have damaged morale and retention and threaten to turn the Army Reserve into a broken force. Lt. Gen. Helmly criticized Pentagon decisions to extend reservists tours in war zones, giving troops as little as 3 days' notice before mobilizations, and calling reservists to active duty after they had served and returned to civilian life. Such policies have strained the Army Reserve to the point that the 200,000 force could be unable to carry out future missions.

Both the Army Reserve and National Guard have suffered shortfalls in recruitment because of the unpredictability, extended call-ups and stop loss policies associated with the Iraq war. National Guard officials said last month that the service must be overhauled.

Everyone knows that small businesses continue to be a most effective at creating new jobs and spurring economic growth nationwide. Small businesses employ over 50 percent of the nation's workforce. Nationwide, small businesses are currently creating 75 percent of new jobs. Furthermore, many of these small businesses provide quality goods and services that are a vital link in the supply chain for our national defense. Many of these small companies need immediate help to keep their business going while their employees are sacrificing for our country in Iraq and elsewhere.

Many of our reservists left their companies in good shape. They were profitable, providing goods or services, creating jobs, adding to the tax base. Our Nation should do everything possible to ensure that upon their return, reservists and their businesses do not suffer unnecessary hardships, which range from impaired operations and financial ruin to deserted clients, layoffs, and even closure. Pedro Sotelo, a 33-year-old veteran from Kansas City, MO, was a reservist for 9 years. From 1997 to 2004 he was called up to active duty 10 times. Each time he was activated, he saw his income drop from $60,000 a year as a small business sheet metal worker to about $30,000 the Army paid him as a staff sergeant. While he was away serving his country, the bills would just keep pilling up. Eventually his credit rating plummeted. The continual financial strain contributed to the end of his first marriage, and after 9 years of service, Mr. Sotelo left the military to take a job selling cars. He is still recovering from the financial ruin created by his service, but I am happy to say that Mr. Sotelo has remarried and was recently promoted to manager at his dealership. Had the bill I introduce today been available for Staff Sergeant Sotelo, his small business employer could have kept his income steady and received a tax credit to cover half of the costs of doing so.

Beyond the hardship of leaving their families, their homes and their regular employment, 41 percent of military reservists and National Guard members, like Staff Sergeant Sotelo, face a pay cut when they're called for active duty in our armed forces. Many of these reservists have families who depend upon that paycheck to survive and can least afford a substantial reduction in pay. Unlike many big businesses that can afford to provide supplemental income to make up for the salary disparity for military reservists called to active duty, most small businesses cannot afford to provide this benefit. This makes it more difficult for small businesses to attract and keep workers. I think it is imperative that we help families of reservists maintain their standard of living while their loved one serves our Nation. We must ensure that our great tradition of citizen soldiers does not fade or stop because of the effect service has on work and family.

Back in 1999, I wrote the Military Reservist Small Business Relief Act, which was enacted into law during the 106th Congress and authorized the Small Business Administration (SBA) to defer existing loan repayments and to reduce the interest rates on direct loans that may be outstanding, including disaster loans, for small businesses that have had a military reservist called up for active duty. It also established a low-interest economic injury loan program administered by the SBA through its disaster loan program. These loans have been available to provide interim operating capital to any small business when the departure of a military reservist for active duty causes economic injury. However, in today's economy, many small businesses are unable to take on additional debt to continue their operations. These small businesses need immediate tax relief to assist them in hiring a replacement and to pay their reservist worker who is away serving our country.

This bill will help every small business whose owner, manager or employee is called to active duty. Most immediately, this bill will assist those small businesses whose employees are in service in Iraq and elsewhere but the act also applies to future contingency operations, military conflicts, or national emergencies.

By helping our reservists and the small businesses that employ them, we can ensure that our great tradition of

citizen soldiers does not fade or stop because of the effect service has on work and family.

I ask all my colleagues to support this important legislation to help both military reservists and the small businesses they are forced to leave when they are called up for active duty.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. STEVENS, and Mr. INOUYE):

S. 241. A bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today along with Senator ROCKEFELLER and the distinguished Chairman and Ranking Member of the Committee on Commerce, Science, and Transportation, Senators STEVENS and INOUYE, to introduce legislation to safeguard the Universal Service Fund, or ''USF,'' the institution that allows rural and low-income Americans to obtain affordable telephone service, allows America's schools and libraries to provide Internet access to all segments of society through the E-Rate program, and permits rural health care providers to obtain telecommunications and Internet services at reduced rates. The concept of Universal Service has been with us nearly as long as the telephone itself, and this bill today marks one key step in ensuring that this vital policy remains intact in the 21st Century.

The legislation introduced today pertains specifically to the Universal Service Administration Company, or ''USAC,'' the private, nonprofit corporation that Congress created to administer the USF. This bill is very similar to S. 2994, a Universal Service bill that I introduced during the last session of Congress and that was passed right before adjournment as part of a larger telecommunications package, H.R. 5419. That bill temporarily exempted USAC from complying with new, arbitrarily-imposed accounting rules that had severely disrupted the E-Rate program and threatened to cause huge spikes in consumers' telephone bills. Many will recall that hundreds of millions of dollars in E-Rate funding for schools and libraries stayed unissued for months because of the accounting rule change, and immediate action was necessary to resolve the problem.

According to USAC's Federal regulators, these new accounting rules needed to be imposed to ensure that the USF was compliant with the federal Anti-Deficiency Act, a law which prevents government agencies from incurring financial obligations beyond the amount that has been appropriated to them by Congress. However, USAC, in administering the USF, does not receive any appropriated funds from Congress. Rather, the USF is funded by a regular disbursement, on a more-or-less monthly basis, of monies derived from a surcharge placed on the revenue generated from interstate telephone calls. The existence of this predictable revenue stream negates any of the risks and concerns that the Anti-Deficiency Act was designed to prevent.

After government accounting rules were imposed on USAC last summer, the entire E-Rate program was frozen. On the eve of the start of the school year, this program—which has enabled 93 percent of schools and libraries in the country to hook up to the Internet—was unable to review and act upon the funding recommendations of thousands of applicants. Many recipients of E-Rate funding actually shut off their Internet connections because they had no money available to maintain service. In order to alleviate this problem, Congress decided last fall to exempt the USF from the Anti-Deficiency Act for one year until a permanent solution to this problem was found. Senator ROCKEFELLER and I decided to pursue a one-year exemption in order to ensure speedy passage of the legislation before adjournment, so that schools and libraries could receive their funding again. Today's legislation provides that permanent solution: a permanent exemption from the Anti-Deficiency Act.

Clear precedent exists for such an exemption. Numerous other federal programs already are exempt from complying with the Anti-Deficiency Act, including the National Park Service and the Conservation Trust. Moreover, an exemption is the rational solution to ensure that this problem does not continue to recur. As I previously mentioned, an exemption is particularly appropriate in this instance because the USF has a funding mechanism different from most federal programs. The USF functioned very well for many years utilizing the Generally Accepted Accounting Principles used by the entire American business world. Trying to engraft special government rules onto USF is akin to forcing a square peg into a round hole. And the result would be another stoppage in E-Rate—and likely the USF Rural High Cost Fund as well—and also a spike in the USF surcharge on consumers' telephone bills.

Finally, I want to ensure my colleagues that a permanent exemption from the Anti-Deficiency Act poses no risk of increased fraud or abuse in the E-Rate Program or in Universal Service as a whole. Some well-publicized abuses of E-Rate did in fact occur, and I will fully support efforts to stamp out such government waste. But the Federal Communications Commission has repeatedly stated that there is absolutely no connection between the Anti-Deficiency Act land the ability of the Inspector General to effectively monitor the program to stamp out waste, fraud, and abuse. As such, government waste cannot be used as a valid reason for opposing this bill.

Last fall we undertook a bipartisan effort among Members on the committees of jurisdiction in both Houses of Congress to enact a temporary exemption for the USF from unnecessary, burdensome regulations. In undertaking that effort we worked closely with the Federal Communications Commission, and enjoyed widespread support among the telecom industry, educators, and State and local governments. I am grateful of the continuing bipartisan support of the Chairman and Ranking Member, as well as of Senator ROCKEFELLER, and it is my hope that we can proceed in similar fashion to make this exemption permanent.

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. 242. A bill to establish 4 memorials to the Space Shuttle *Columbia* in the State of Texas; to the Committee on Energy and Natural Resources.

Mrs. HUTCHISON. Mr. President, today in honor of the memory and sacrifice of seven astronauts whose lives were tragically cut short two years ago in the destruction of the Space Shuttle *Columbia*, I bring to the floor a bill to authorize the construction of several memorials in communities along the Space Shuttle Columbia Recovery Corridor; specifically, Lufkin, Hemphill, Nacogdoches, and San Augustine, TX.

Each of these communities will memorialize the disaster and the indomitable spirit of adventure and courage, the spirit that defies complacency and accepts challenge, the spirit that each of these astronauts and each of these communities showed.

This search for adventure turned space travel from dreams to a reality. It is this spirit of challenge which fueled the courage and ambition of seven men and women into the sky on January 6, 2003. It is also this same spirit that drives these communities to permanently commemorate the high price we sometimes pay for reaching new horizons.

Hemphill, TX, where the nose cone of the Shuttle was found, is also where the remains of the crew were recovered. The VFW post in Hemphill fed thousands of volunteers for weeks without so much as a complaint or a dime. The men and women of Hemphill did not take their task lightly, but rather with a solemn grace and dignity.

The greatest amount of debris came down in the populated areas of Nacogdoches, TX. Backyards and streets were littered with debris, permanently altering the community. The citizens of Nacogdoches pulled together and focused on the recovery, working day and night with NASA until the job was complete. A spirit of courage filled the community of Nacogdoches and their efforts should never be forgotten.

The population of Lufkin, TX doubled overnight as the retrieval effort

started. The community's residents welcomed thousands with hospitality and made their civic center NASA's Columbia retrieval command center. From combing the streets and fields for debris to making home cooked meals for the recovery workers, the people of Lufkin mustered around the Columbia tragedy.

The citizens of San Augustine, TX were a driving force behind the recovery effort. Local elected officials and countless volunteers opened their hearts and their homes to strangers also affected by the tragedy. Searching the piney woods of deep east Texas on horseback and walking the streets in search of shuttle fragments, the spirit of San Augustine could not be crushed.

In recent years, America has experienced grief with the loss of many heroes. But our collective loss with the *Columbia* tragedy still sears our souls and the pain is never easy to bear. Today, two years after they vanished into the deep blue skies of Texas, we pause to remember and honor Rick Husband, Kalpana Chawla, Laurel Clark, Ilan Roman, William McCool, David Brown, and Michael Anderson.

And though the families' losses cannot be diminished, their pain and grief is shared around the world and our prayers are with them. This bill will memorialize their sacrifice and will honor the courageous spirit of the communities affected. Their sacrifices will never be forgotten.

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

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

S. 242

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 ''Columbia Space Shuttle Memorials Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MEMORIAL.—The term ''memorial'' means each of the memorials to the Space Shuttle Columbia established by section 3(a).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 3. MEMORIALS TO THE SPACE SHUTTLE COLUMBIA.

(a) ESTABLISHMENT.—There are established, as units of the National Park System, 4 memorials to the Space Shuttle Columbia to be located on the 4 parcels of land in the State of Texas described in subsection (b) on which large debris from the Space Shuttle Columbia was recovered.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are—

(1) the parcel of land owned by the Fredonia Corporation, located at the southeast corner of the intersection of East Hospital Street and North Fredonia Street, Nacogdoches, Texas;

(2) the parcel of land owned by Temple Inland Inc., 10 acres of a 61-acre tract bounded by State Highway 83 and Bayou Bend Road, Hemphill, Texas;

(3) the parcel of land owned by the city of Lufkin, Texas, located at City Hall Park, 301 Charlton Street, Lufkin, Texas; and

(4) the parcel of land owned by San Augustine County, Texas, located at 1109 Oaklawn Street, San Augustine, Texas.

(c) ADMINISTRATION.—The memorials shall be administered by the Secretary.

(d) ADDITIONAL SITES.—The Secretary may recommend to Congress additional sites in the State of Texas related to the Space Shuttle Columbia for establishment as memorials to the Space Shuttle Columbia.

By Mr. THOMAS:

S. 243. A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I rise today to introduce the ''National Heritage Partnership Act,'' a bill to establish a program and criteria for National Heritage Areas in the United States.

Twenty-seven National Heritage Areas currently exist in this country, including 4 new areas designated in appropriations bills by the 108th Congress. Six occur in the State of Pennsylvania alone. They range in size from a 10-mile canal in Augusta, GA, to the entire State of Tennessee. Specific areas are designated to recognize and preserve the cultural heritage of the oil industry, coal mining, the evolution of manned flight, and the Civil War, just to name a few. The National Park Service has responsibility for advising heritage area managers and providing Federal funds, but a formal process and criteria for designating new areas do not exist.

State delegations are planning to introduce legislation to designate 13 new National Heritage Areas and authorize studies on an additional 5. Hundreds of State heritage areas currently exist and all could potentially become National Heritage Areas under the current process. This program is out of control. We are continuing to put unnecessary fiscal and resource demands on the National Park Service at a time when a significant maintenance backlog exists in park units throughout the Nation. We have no established criteria to ensure the recognition of truly nationally important areas.

During the 108th Congress, the National Parks Subcommittee conducted two hearings on heritage areas and received a review from the General Accounting Office. My legislation combines the recommendations of the National Park Service, General Accounting Office, and witness testimony by establishing criteria such as national importance, creating a process for studying and reviewing new areas, requiring fiscal accountability and protecting the rights of property owners.

This legislation is overdue. It provides a balanced approach to National Heritage Area designation, management, and oversight.

By Ms. COLLINS (for herself, Ms. CANTWELL, Ms. SNOWE, Mrs. MURRAY, Mr. JEFFORDS, and Mr. DEWINE):

S. 245. A bill to provide for the development and coordination of a comprehensive and integrated United States research program that assists the people of the United States and the world to understand, assess, and predict human-induced and natural processes of abrupt climate change; to the Committee on Commerce, Science, and Transportation.

Ms. COLLINS. Mr. President, I rise to introduce the Abrupt Climate Change Research Act of 2005. This bill would authorize $10 million per year for the next six years for the National Oceanic and Atmospheric Administration, in partnership with universities across the Nation, to conduct research on abrupt climate change.

The subject of climate change remains controversial. Nevertheless, I believe there is one issue on which almost everyone can agree: A great deal more scientific research is necessary in order to better understand the potential risk of abrupt climate change.

Understanding and predicting climate change are enormous scientific challenges. The challenges are made even more difficult with the recognition that the climate system is capable of dramatic and abrupt changes. Scientists have determined that past global temperatures have swung as much as 20° F within a decade, accompanied by drought in some places and catastrophic floods in other places. An abrupt climate change triggered by the ongoing buildup of greenhouse gases in the atmosphere would also likely result in the redistribution of atmospheric moisture and rainfall, with substantial impact on the world's food supplies. Unfortunately, we have no satisfactory understanding of what triggers abrupt climate changes.

Both the National Academy of Sciences and the Administration's Strategic Climate Change Science Plan identify abrupt climate change as a key priority for additional research. In a 2002 report, the National Academy of Sciences stated that ''Large, abrupt climate changes have repeatedly affected much or all of the Earth.'' Furthermore, the report stated that ''abrupt climate changes are not only possible but likely in the future, potentially with large impacts on ecosystems and societies.'' The report noted that we're not doing nearly enough to identify even the threat of abrupt climate change. My bill would lay the framework and provide the funds for the United States to understand and address abrupt climate change.

One reason this funding is so urgent is that we're rapidly losing one of the greatest sources of information: Ice cores from glaciers. The University of Maine's Climate Change Institute has one of the best abrupt climate change research programs in the world. The Climate Change Institute uses ice cores from glaciers and ice sheets around the world to make discoveries that change the way we think about climate change. Unfortunately, numerous glaciers around the world are melting; and

when they go, we lose the very record that has given us so much of this critical climatic history.

I recently had the opportunity to see for myself how scientists are able to use glaciers and ice sheets to understand climate change. In August, I traveled with Senators MCCAIN, SUNUNU, and others to the northernmost community in the world. We visited Ny-Alesund on the Norwegian island of Spitsbergen. Located at 79 degrees north, Ny-Alesund lies well north of the Arctic Circle and is much closer to the North Pole than to Oslo, the country's capital. It has even served as a starting point for several polar expeditions, although thankfully, Senator MCCAIN did not include an attempt to reach the North Pole on our itinerary.

The scientists we met with told us that the global climate is changing more rapidly now than at any time since the beginning of civilization. They further state that the region of the globe changing most rapidly is the Arctic. The changes are remarkable and disturbing.

In the last 30 years, the Arctic has lost sea-ice cover over an area 10 times as large as the State of Maine. In the summer, the change is even more dramatic, with twice as much ice loss. The ice that remains is as much as 40 percent thinner than it was just a few decades ago. In addition to disappearing sea-ice, Arctic glaciers are also rapidly retreating. In Ny-Alesund, Senator MCCAIN and I witnessed massive blocks of ice falling off glaciers that had already retreated well back from the shores where they once rested.

The melting of glaciers and sea ice, the thawing of permafrost, and the increases in sea levels resulting from warming are already beginning to cause environmental, social, and economic changes. Indeed, the social and economic disruption resulting from climate change is already evident in a number of regions throughout the Arctic, including Alaska. Some coastal communities in Alaska are facing increased exposure to storms and coastal erosion as a reduction in sea ice allows higher waves and storm surges to reach shore. In other areas, thawing ground is disrupting transportation, buildings, and other infrastructure. Some indigenous communities are already facing the prospect of relocating. If these changes were to be compounded with an abrupt climate change on the scale seen in our climatic history, the result could be devastating.

I know that my colleague, the chairman of the Commerce Committee and senior Senator from Alaska, is very concerned about how Arctic climate changes are affecting his State. I know he recognizes that more research funding is necessary in order to understand future climate changes. I look forward to working with Chairman STEVENS, Ranking Member INOUYE, and other members of the Commerce Committee to address this extremely important issue in the 109th Congress.

I am grateful to my cosponsors, Senators CANTWELL, SNOWE, MURRAY, JEFFORDS, and DEWINE. I look forward to working with all of my colleagues over the coming months in order to address this important issue.

Ms. SNOWE. Mr. President, I rise today to cosponsor the Abrupt Climate Change Research Act of 2005, legislation which will address the critical, comprehensive and integrated research needed for abrupt climate change. In the 108th, this legislation was passed by the Senate Commerce Committee. Its merits are just as pressing, if not more critical, for the 109th Congress as the legislation calls for developing and coordinating a research program over 6 years aimed at understanding, assessing, and predicting both human-induced and natural processes of abrupt climate change.

The abrupt climate change research issue is one that the Maine Senate delegation has been working on for the past 3½ years, the genesis of which goes back to a Climate Change Conference in Maine in October 2001, which was attended by a wide array of stakeholders in the State who have been active in climate change issues for a number of years.

I believe we all ought to be concerned by the picture scientific research is painting, which points to the reality and potential impact of abrupt shifts in climate. The December 2001 National Academy of Sciences report documented a growing body of scientific evidence that suggests our global climate can swing abruptly, not gradually over time. Moreover, such sudden jumps, and I quote from the Academies' report, ''are not only possible but likely in the future.''

Rather than dismiss this, as some have, as the ''science de jour'' I prefer to take this as a serious warning, based on the best available evidence and analysis. The risk of complacency is to gamble immense environmental and societal consequences. That's why the NAS report urged that a new research program be initiated to examine the potential impact of a sudden change in climate in response to global warming. And that's also why, back in May of 2002, when NOAA's Admiral Lautenbacher was before the Commerce Committee testifying on NOAA's FY 2003 Budget, I raised the need for abrupt climate change studies, and the Admiral agreed this is a pressing priority. Since the introduction of the research bill in the 108th Congress, NOAA, in a January 15, 2004 report, stated that calendar year 2003 tied 2002 as the 2nd warmest year on record.

Mr. President, as co-chair of the independent International Climate Change Taskforce, I was pleased to disseminate to my colleagues the recently published Taskforce report, ''Meeting the Climate Challenge.'' The ICCT includes leaders from public service, science, business and civil society, from both developed and developing countries. Our goal was to find common ground through recommendations that could be helpful to all governments and policymakers worldwide for developing solutions to address climate change.

Indeed, our first recommendation calls for a long-term objective to prevent global average temperature from rising more than 2 degrees Centigrade, or 3.6 degrees Fahrenheit, above the pre-industrial level by 2100. This target would limit the extent and magnitude of the impacts of climate change if all countries take various actions. I will ask unanimous consent to submit the ICCT's ten recommendations for the RECORD. In the upcoming weeks and months, I will be introducing legislation that reflects these public policy recommendations.

The temperature goal is crucial to the debate on abrupt climate change because, if the earth goes beyond the 2 degree C level, scientists have suggested that risks to both ecosystems and humans increase significantly. As the risks of accelerated or—as our report stated—''runaway'' climate change increases, a ''tipping point'' could be reached that would include the loss of the West Antarctic and Greenland ice sheets, leading to the rise of sea levels.

On this score, abrupt and paleoclimate research can greatly enhance the evolving body of scientific evidence, and that is why Senator LAUTENBERG and I spearheaded the effort last year to restore the FY2005 National Oceanic and Atmospheric Administration, NOAA, research programs that will enable us to examine past climate change patterns. This information will guide the development of future models to assist both scientists and policymakers to improve their understanding of climate change through, for instance, the CORC–ARCHES program and paleoclimate research. The University of Maine, under the direction of Dr. George Denton, has been part of the decades-long consortium that has been studying deep ocean currents in the Weddell Sea in Antarctica, and ice core samples from northern latitudes, which is helping scientists command a greater understanding of abrupt climate change.

There have also been other, newer scientific reports that should give us great pause. Among those reports, the Arctic Climate Impact Assessment states, ''Arctic average temperature has risen at almost twice the rate as the rest of the world in the past few decades. Widespread melting of glaciers and sea ice and rising permafrost temperatures present additional evidence of strong arctic warming. These changes in the Arctic provide an early indication of the environmental and societal significance of global warming.''

There is scientific observational evidence that indicates that regional changes in climate, particularly increases in temperature, are already affecting a diverse set of physical and biological systems in many parts of the

world. Off the coast of Canada lies a 150–square mile, 100–foot thick mass of ice that has existed on the coast for 3,000 years, but it is now disintegrating. That melting has been accelerating over the past 2 years. In addition, coral reefs, an irreplaceable marine resource around the world, are under tremendous stress as coral bleaching is induced by high water temperatures. Indeed, there are reports of a massive region-wide decline of coral which supports a huge variety of sea life across the entire Caribbean Basin.

As we turn to the future, we should harbor no illusions that we are looking at a timetable measured in epochs. We are talking about tens of thousands of years. To the contrary, observed changes tell us that the snows of Kilimanjaro could vanish in 15 years, the glaciers in the Bolivian Andes that once appeared indestructible may disappear in another 10 years, and in Alaska, where the average temperature has risen almost 5 and one half degrees over the past 30 years, there is evidence of melting permafrost and dying forests.

So my question is, what are we waiting for? Is this the kind of legacy we want to leave to future generations and the next millennium? Why not apply now the lessons of the past and present?

Indeed, if ''past is prologue,'' and I believe it is, this bill will improve our understanding of climate change by calling for research to bolster existing, global records of past abrupt climate change, through the study of ice cores, for instance. In this manner we can improve scientific understanding of the mechanisms of abrupt climate change, and incorporate this knowledge into current scientific models. Even for those who question prevailing scientific opinion on the climate change issue, this bill should hold the appeal of increasing our stock of knowledge, wherever it may lead.

In the final analysis, we need to carry out research that will allow us to gauge climate change secrets of the past, so we in turn might develop future models that will assist both scientists and policymakers in understanding climate change. The reality is, there is no doubt our global climate has changed in the past. There should similarly be no question that it would be beneficial to understand the manner in which that change has occurred and why, and so I urge my colleague's support for this legislation, and will work for its passage out of the Commerce Committee and to the Senate floor.

I ask unanimous consent that the Summary of Main Recommendations be printed in the RECORD.

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

SUMMARY OF MAIN RECOMMENDATIONS

1. A long-term objective be established to prevent global average temperature from rising more than 2°C (3.6°F) above the pre-industrial level, to limit the extent and magnitude of climate-change impacts.

2. A global framework be adopted that builds on the UNFCCC and the Kyoto Protocol, and enables all countries to be part of concerted action on climate change at the global level in the post-2012 period, on the basis of equity and common but differentiated responsibilities.

3. G8 governments establish national renewable portfolio standards to generate at least 25% of electricity from renewable energy sources by 2025, with higher targets needed for some G8 governments.

4. G8 governments increase their spending on research, development, and demonstration of advanced technologies for energy-efficient and low- and zero-carbon energy supply by two-fold or more by 2010, at the same time as adopting near-term strategies for the large-scale deployment of existing low- and no-carbon technologies.

5. The G8 and other major economies, including from the developing world, form a G8+ Climate Group, to pursue technology agreements and related initiatives that will lead to large emissions reductions.

6. The G8+ Climate Group agree to shift their agricultural subsidies from food crops to biofuels, especially those derived from cellulosic materials, while implementing appropriate safeguards to ensure sustainable farming methods are encouraged, culturally and ecologically sensitive land preserved, and biodiversity protected.

7. All developed countries introduce national mandatory cap-and-trade systems for carbon emissions, and construct them to allow for their future integration into a single global market.

8. Governments remove barriers to and increase investment in renewable energy and energy efficient technologies and practices through such measures as the phase-out of fossil fuel subsidies and requiring Export Credit Agencies and Multilateral Development Banks to adopt minimum efficiency or carbon intensity standards for projects they support.

9. Developed countries honour existing commitments to provide greater financial and technical assistance to help vulnerable countries adapt to climate change, including the commitments made at the seventh conference of the parties to the UNFCCC in 2001, and pursue the establishment of an international compensation fund to support disaster mitigation and preparedness.

10. Governments committed to action on climate change raise public awareness of the problem and build public support for climate policies by pledging to provide substantial long-term investment in effective climate communication activities.

By Mr. BUNNING (for himself, Mr. NELSON of Nebraska, Mr. DEMINT, Mr. CRAIG, Mr. INHOFE, Mr. BROWNBACK, Mr. LUGAR, Mr. SANTORUM, Mr. COLEMAN, and Mr. DOMENICI):

S. 246. A bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce the Adoption Tax Relief Guarantee Act of 2005. This legislation will help American families break the financial barriers to successfully adopting a child, especially those children with special needs who cannot take care of themselves. By helping to ease this financial burden, we can encourage the development of more stable families and provide a brighter future for thousands of children.

These important goals prompted us to act 4 years ago, when we passed adoption tax incentives in the 2001 tax bill. However, they are set to sunset and will expire on December 31, 2010. I believe it is essential that we support the American family and extend these provisions.

This bill repeals the sunset for adoption tax credits. Specifically, this will allow those Americans who adopt a child to continue to receive a credit in the amount of their qualified expenses and guarantees the maximum $10,000 credit for those who adopt children with special needs. If we fail to act, these credits would revert to $5,000. This legislation also continues the expanded eligibility for adoption assistance programs for those earning up to $150,000, rather than allowing it to fall back to $75,000.

I am pleased that a bipartisan group of Senators has cosponsored this legislation, and that it has been endorsed by the National Council for Adoption. Those children without parents and those parents without children need our help to bring them together. We owe it to them to act now.

By Mr. DEMINT:

S. 248. A bill to amend title 23, United States Code, to permit States to carry out surface transportation program projects on local roads to address safety concerns; to the Committee on Environment and Public Works.

Mr. DEMINT. Mr. President, each State has unique road needs and different transportation priorities. In order to more effectively leverage limited dollars, State transportation agencies need increased flexibility to use Federal funds for projects identified as safety concerns.

Currently, when an urgent need arises, a State must apply to the Secretary of Transportation for a waiver and fill out mountains of paperwork in order to transfer funds to critical priorities. We need to empower States to make their own decisions when it comes to meeting their most urgent safety needs.

Today, I introduce legislation called the Surface Transportation Adaptability to Ensure Safety Act or ''STATES Act,'' which allows States to undertake a surface transportation project on any State-maintained public road if the State determines that the project is necessary to address high fatality rates or other safety concerns.

This bill empowers States, such as South Carolina, to respond to serious needs quickly, while also allowing them to make the most efficient use of the transportation dollars they receive. Under this legislation, a State can decide to use its Surface Transportation Program funding on a road functionally classified as a rural or minor collector without getting permission from Washington.

No red tape. No Federal bureaucracy. Just a decision made at the local level by the people with the best understanding of the situation. It is time to bring safety decisions down to the local level and give each State the discretion to allocate funds to the most pressing safety concerns in its highway program.

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

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

S. 248

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 ''Surface Transportation Adaptability to Ensure Safety (STATES) Act of 2005''.

SEC. 2. LOCATION OF SURFACE TRANSPORTATION PROGRAM PROJECTS.

Section 133(c) of title 23, United States Code, is amended—

(1) by striking ''Except'' and inserting the following:

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) SAFETY PROJECTS.—Notwithstanding paragraph (1), a State may undertake a surface transportation program project on any State-maintained public road, including a road functionally classified as a local or rural minor collector, if the State determines that the project is necessary to address high fatality rates or other safety concerns.''.

By Mr. REID (for himself, Mr. ENSIGN, and Mr. BENNETT):

S. 249. A bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself, Senator ENSIGN and Senator BENNETT to introduce this bill, which will establish a National Heritage Route in eastern Nevada and western Utah.

National Heritage areas, corridors, and routes are designated regions in which residents and businesses, as well as local and tribal governments join together in partnership to conserve and celebrate cultural heritage and special landscapes. The Great Basin National Heritage Route includes historic mining camps and ghost towns, Mormon and other pioneer settlements, as well as Native American communities. The Route passes through classic Great Basin country along the trails of the Pony Express and the Overland Stage. Cultural resources within the route include highly valued Native American archaeological sites dating back to the Fremont Culture.

The creation of this Heritage Route will bring much deserved attention to the Great Basin's natural wonders. Passing through Millard County, UT, and parts of the Duckwater Reservation and White Pine County in Nevada, the Route contains items of great biological and geological interest. In Nevada, it encompasses forests of bristlecone pine, the oldest living things on the earth. In Utah, the Route includes native Bonneville cutthroat trout as well as other distinctive species and ecological communities.

Designation of the corridor as a Heritage Route will also ensure long-term protection of key educational and recreational opportunities without compromising traditional local use of the land. The Great Basin National Heritage Route will provide a framework for celebrating Nevada's and Utah's rich historic, archaeological, cultural, and natural resources for both visitors and residents.

The bill will establish a board of directors consisting of local officials from both counties and tribes to manage the designated route. The board will develop a management plan within 3 years of the bill's passage, and the Secretary of the Interior will enter into a memorandum of understanding with the Board of Directors for the management of the resources of the heritage route. Our legislation authorizes up to $10 million to carry out the Act but limits Federal funding to no more than 50 percent of the project's cost. The bill allows the Secretary to provide assistance for 15 years after the bill is enacted.

Our bill benefits not just the people of Nevada and Utah, but citizens of every State in our Union. It highlights an area of outstanding cultural and natural value and brings people together to celebrate common values and a common history of which we all can be proud.

I was pleased that my distinguished colleagues recognized the value of this legislation during the 108th Congress and supported its passage by the Energy and Natural Resources Committee and by the Senate as a whole. I look forward to working with my friends to move this bill in a timely manner during the current session.

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

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

S. 249

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 ''Great Basin National Heritage Route Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the natural, cultural, and historic heritage of the North American Great Basin is nationally significant;

(2) communities along the Great Basin Heritage Route (including the towns of Delta, Utah, Ely, Nevada, and the surrounding communities) are located in a classic western landscape that contains long natural vistas, isolated high desert valleys, mountain ranges, ranches, mines, historic railroads, archaeological sites, and tribal communities;

(3) the Native American, pioneer, ranching, mining, timber, and railroad heritages associated with the Great Basin Heritage Route include the social history and living cultural traditions of a rich diversity of nationalities;

(4) the pioneer, Mormon, and other religious settlements, and ranching, timber, and mining activities of the region played and continue to play a significant role in the development of the United States, shaped by—

(A) the unique geography of the Great Basin;

(B) an influx of people of Greek, Chinese, Basque, Serb, Croat, Italian, and Hispanic descent; and

(C) a Native American presence (Western Shoshone, Northern and Southern Paiute, and Goshute) that continues in the Great Basin today;

(5) the Great Basin housed internment camps for Japanese-American citizens during World War II, 1 of which, Topaz, was located along the Heritage Route;

(6) the pioneer heritage of the Heritage Route includes the Pony Express route and stations, the Overland Stage, and many examples of 19th century exploration of the western United States;

(7) the Native American heritage of the Heritage Route dates back thousands of years and includes—

(A) archaeological sites;

(B) petroglyphs and pictographs;

(C) the westernmost village of the Fremont culture; and

(D) communities of Western Shoshone, Paiute, and Goshute tribes;

(8) the Heritage Route contains multiple biologically diverse ecological communities that are home to exceptional species such as—

(A) bristlecone pines, the oldest living trees in the world;

(B) wildlife adapted to harsh desert conditions;

(C) unique plant communities, lakes, and streams; and

(D) native Bonneville cutthroat trout;

(9) the air and water quality of the Heritage Route is among the best in the United States, and the clear air permits outstanding viewing of the night skies;

(10) the Heritage Route includes unique and outstanding geologic features such as numerous limestone caves, classic basin and range topography with playa lakes, alluvial fans, volcanics, cold and hot springs, and recognizable features of ancient Lake Bonneville;

(11) the Heritage Route includes an unusual variety of open space and recreational and educational opportunities because of the great quantity of ranching activity and public land (including city, county, and State parks, national forests, Bureau of Land Management land, and a national park);

(12) there are significant archaeological, historical, cultural, natural, scenic, and recreational resources in the Great Basin to merit the involvement of the Federal Government in the development, in cooperation with the Great Basin Heritage Route Partnership and other local and governmental entities, of programs and projects to—

(A) adequately conserve, protect, and interpret the heritage of the Great Basin for present and future generations; and

(B) provide opportunities in the Great Basin for education; and

(13) the Great Basin Heritage Route Partnership shall serve as the management entity for a Heritage Route established in the Great Basin.

(b) PURPOSES.—The purposes of this Act are—

(1) to foster a close working relationship with all levels of government, the private sector, and the local communities within White Pine County, Nevada, Millard County,

Utah, and the Duckwater Shoshone Reservation;

(2) to enable communities referred to in paragraph (1) to conserve their heritage while continuing to develop economic opportunities; and

(3) to conserve, interpret, and develop the archaeological, historical, cultural, natural, scenic, and recreational resources related to the unique ranching, industrial, and cultural heritage of the Great Basin, in a manner that promotes multiple uses permitted as of the date of enactment of this Act, without managing or regulating land use.

SEC. 3. DEFINITIONS.

In this Act:

(1) GREAT BASIN.—The term ''Great Basin'' means the North American Great Basin.

(2) HERITAGE ROUTE.—The term ''Heritage Route'' means the Great Basin National Heritage Route established by section 4(a).

(3) MANAGEMENT ENTITY.—The term ''management entity'' means the Great Basin Heritage Route Partnership established by section 4(c).

(4) MANAGEMENT PLAN.—The term ''management plan'' means the plan developed by the management entity under section 6(a).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 4. GREAT BASIN NATIONAL HERITAGE ROUTE.

(a) ESTABLISHMENT.—There is established the Great Basin National Heritage Route to provide the public with access to certain historical, cultural, natural, scenic, and recreational resources in White Pine County, Nevada, Millard County, Utah, and the Duckwater Shoshone Reservation in the State of Nevada, as designated by the management entity.

(b) BOUNDARIES.—The management entity shall determine the specific boundaries of the Heritage Route.

(c) MANAGEMENT ENTITY.—

(1) IN GENERAL.—The Great Basin Heritage Route Partnership shall serve as the management entity for the Heritage Route.

(2) BOARD OF DIRECTORS.—The Great Basin Heritage Route Partnership shall be governed by a board of directors that consists of—

(A) 4 members who are appointed by the Board of County Commissioners for Millard County, Utah;

(B) 4 members who are appointed by the Board of County Commissioners for White Pine County, Nevada; and

(C) a representative appointed by each Native American Tribe participating in the Heritage Route.

SEC. 5. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—In carrying out this Act, the Secretary, in consultation with the Governors of the States of Nevada and Utah and the tribal government of each Indian tribe participating in the Heritage Route, shall enter into a memorandum of understanding with the management entity.

(b) INCLUSIONS.—The memorandum of understanding shall include information relating to the objectives and management of the Heritage Route, including—

(1) a description of the resources of the Heritage Route;

(2) a discussion of the goals and objectives of the Heritage Route, including—

(A) an explanation of the proposed approach to conservation, development, and interpretation; and

(B) a general outline of the anticipated protection and development measures;

(3) a description of the management entity;

(4) a list and statement of the financial commitment of the initial partners to be involved in developing and implementing the management plan; and

(5) a description of the role of the States of Nevada and Utah in the management of the Heritage Route.

(c) ADDITIONAL REQUIREMENTS.—In developing the terms of the memorandum of understanding, the Secretary and the management entity shall—

(1) provide opportunities for local participation; and

(2) include terms that ensure, to the maximum extent practicable, timely implementation of all aspects of the memorandum of understanding.

(d) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review any amendments of the memorandum of understanding proposed by the management entity or the Governor of the State of Nevada or Utah.

(2) USE OF FUNDS.—Funds made available under this Act shall not be expended to implement a change made by a proposed amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 6. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop and submit to the Secretary for approval a management plan for the Heritage Route that—

(1) specifies—

(A) any resources designated by the management entity under section 4(a); and

(B) the specific boundaries of the Heritage Route, as determined under section 4(b); and

(2) presents clear and comprehensive recommendations for the conservation, funding, management, and development of the Heritage Route.

(b) CONSIDERATIONS.—In developing the management plan, the management entity shall—

(1) provide for the participation of local residents, public agencies, and private organizations located within the counties of Millard County, Utah, White Pine County, Nevada, and the Duckwater Shoshone Reservation in the protection and development of resources of the Heritage Route, taking into consideration State, tribal, county, and local land use plans in existence on the date of enactment of this Act;

(2) identify sources of funding;

(3) include—

(A) a program for implementation of the management plan by the management entity, including—

(i) plans for restoration, stabilization, rehabilitation, and construction of public or tribal property; and

(ii) specific commitments by the identified partners referred to in section 5(b)(4) for the first 5 years of operation; and

(B) an interpretation plan for the Heritage Route; and

(4) develop a management plan that will not infringe on private property rights without the consent of the owner of the private property.

(c) FAILURE TO SUBMIT.—If the management entity fails to submit a management plan to the Secretary in accordance with subsection (a), the Heritage Route shall no longer qualify for Federal funding.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of a management plan under subsection (a), the Secretary, in consultation with the Governors of the States of Nevada and Utah, shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve a management plan, the Secretary shall consider whether the management plan—

(A) has strong local support from a diversity of landowners, business interests, nonprofit organizations, and governments associated with the Heritage Route;

(B) is consistent with and complements continued economic activity along the Heritage Route;

(C) has a high potential for effective partnership mechanisms;

(D) avoids infringing on private property rights; and

(E) provides methods to take appropriate action to ensure that private property rights are observed.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 90 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(e) IMPLEMENTATION.—On approval of the management plan as provided in subsection (d)(1), the management entity, in conjunction with the Secretary, shall take appropriate steps to implement the management plan.

(f) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) USE OF FUNDS.—Funds made available under this Act shall not be expended to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 7. AUTHORITY AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may, for purposes of preparing and implementing the management plan, use funds made available under this Act to—

(1) make grants to, and enter into cooperative agreements with, a State (including a political subdivision), an Indian tribe, a private organization, or any person; and

(2) hire and compensate staff.

(b) DUTIES.—In addition to developing the management plan, the management entity shall—

(1) give priority to implementing the memorandum of understanding and the management plan, including taking steps to—

(A) assist units of government, regional planning organizations, and nonprofit organizations in—

(i) establishing and maintaining interpretive exhibits along the Heritage Route;

(ii) developing recreational resources along the Heritage Route;

(iii) increasing public awareness of and appreciation for the archaeological, historical, cultural, natural, scenic, and recreational resources and sites along the Heritage Route; and

(iv) if requested by the owner, restoring, stabilizing, or rehabilitating any private, public, or tribal historical building relating to the themes of the Heritage Route;

(B) encourage economic viability and diversity along the Heritage Route in accordance with the objectives of the management plan; and

(C) encourage the installation of clear, consistent, and environmentally appropriate signage identifying access points and sites of interest along the Heritage Route;

(2) consider the interests of diverse governmental, business, and nonprofit groups associated with the Heritage Route;

(3) conduct public meetings in the region of the Heritage Route at least semiannually regarding the implementation of the management plan;

(4) submit substantial amendments (including any increase of more than 20 percent in the cost estimates for implementation) to the management plan to the Secretary for approval by the Secretary; and

(5) for any year for which Federal funds are received under this Act—

(A) submit to the Secretary a report that describes, for the year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which any loan or grant was made;

(B) make available for audit all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing the expenditure of Federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of the funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(d) PROHIBITION ON THE REGULATION OF LAND USE.—The management entity shall not regulate land use within the Heritage Route.

SEC. 8. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary may, on request of the management entity, provide technical and financial assistance to develop and implement the management plan and memorandum of understanding.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall, on request of the management entity, give priority to actions that assist in—

(A) conserving the significant archaeological, historical, cultural, natural, scenic, and recreational resources of the Heritage Route; and

(B) providing education, interpretive, and recreational opportunities, and other uses consistent with those resources.

(b) APPLICATION OF FEDERAL LAW.—The establishment of the Heritage Route shall have no effect on the application of any Federal law to any property within the Heritage Route.

SEC. 9. LAND USE REGULATION; APPLICABILITY OF FEDERAL LAW.

(a) LAND USE REGULATION.—Nothing in this Act—

(1) modifies, enlarges, or diminishes any authority of the Federal, State, tribal, or local government to regulate by law (including by regulation) any use of land; or

(2) grants any power of zoning or land use to the management entity.

(b) APPLICABILITY OF FEDERAL LAW.—Nothing in this Act—

(1) imposes on the Heritage Route, as a result of the designation of the Heritage Route, any regulation that is not applicable to the area within the Heritage Route as of the date of enactment of this Act; or

(2) authorizes any agency to promulgate a regulation that applies to the Heritage Route solely as a result of the designation of the Heritage Route under this Act.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of any activity assisted under this Act shall not exceed 50 percent.

(2) FORM OF NON-FEDERAL SHARE.—The non-Federal share may be in the form of in-kind contributions, donations, grants, and loans from individuals and State or local governments or agencies.

SEC. 11. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

Mr. ENZI (for himself and Mr. Kennedy):

S. 250. A bill to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI: Mr. President, I rise today to introduce the Carl D. Perkins Vocational and Technical Education Improvement Act of 2005. The Perkins Act, together with the Workforce Investment Act, the Higher Education Act, and other federal education and programs, provides important resources that are needed to help adequately prepare students of all ages for jobs in high-wage and highskilled occupations. It is part of a group of federal education and programs that are critical to a lifelong of learning. In this technology driven, global economy, school is never out. Everyone is a student who must adapt to the changing needs of their jobs and the workforce by continuing to pursue an education in their chosen field. In turn, Congress must ensure that education and training are connected to the needs of business, including small businesses, now and into the future.

It is my hope that this body will take the necessary action to reauthorize the Carl D. Perkins Vocational and Technical Education Act. The Act works together with a combination of federal education and training programs that will strengthen our workforce and enable America to compete—and succeed—in the global economy.

At a hearing held on June 24, 2004, before the Health, Education, Labor and Pensions Committee, members heard testimonies from leaders in career and technical training emphasizing the importance of constant training, retraining and upgrading of the skills today's jobs require. One of the things we learned at that hearing is that many students leaving high school or college and entering the workforce find themselves unprepared for life because they lack the skills they need to succeed in the workforce. This country created over 2 million new jobs since January 2001. That's great news. Unfortunately, the complaint heard from employers is that there are too few skilled workers to meet their needs. We have a strong interest in making sure this is corrected. The Perkins Act would provide both strong academic and relevant job skill training to promote and sustain the long-term competitiveness of this country.

A unique aspect of the Perkins program that addresses the needs of the changing workforce is that it targets funds to both secondary and postsecondary schools. This approach provides a good platform from which we can better coordinate workforce preparation policy and training with an emphasis on lifelong learning. It is essential to facilitate a sequence of career or technical education courses that a student can complete before they even get to college, and that they can continue at the postsecondary level, whenever they decide to go on.

This legislation introduced today is the result of a bipartisan process that began in the 108th Congress. I'm pleased to have worked with the Members of the Committee and stakeholders on a bipartisan bill that will improve the Perkins Act to better meet the needs of students, workers, and business. This legislation will help strengthen the Perkins program by improving accountability, involving businesses in career and technical education programs, emphasizing challenging academic instruction, and advancing the field of career and technical education by linking those programs to advances in industry.

This legislation would also encourage greater collaboration between state agencies responsible for education and training activities. It requires state agencies to work together on identifying the needs of the workforce and designing curriculum to match those needs. It also emphasizes the needs of nontraditional students and other lifelong learners, who are returning to school for the first time, or those who are seeking additional skill training.

This legislation also continues to emphasize the need to introduce women and girls to high skill, high wage jobs. It is important that we help expand the vision of our students to ensure they consider all the options that are available to them, not just the ones that fit general, and sometimes erroneous, conceptions.

I hope our bipartisan efforts will continue to produce results as we move the bill through the Senate and into Conference. I do not wish to see another piece of bipartisan legislation lost in the legislative limbo of election year politics. An important step that the Senate must take is to appoint conferees to finish the reauthorization of the Workforce Investment Act. That program offers the resources that are needed to help adequately prepare more than 900,000 unemployed workers find work each year. It passed the Senate unanimously, both in Committee and the floor. Conferees must now be appointed before the August recess. If we are going to help workers in this country, we must send this important legislation to Conference so that it will ultimately reach the President and be signed into law.

I cannot stress enough the importance of Federal initiatives like the Carl D. Perkins Vocational and Technical Education Act and the Workforce

Investment Act to keep American workers and businesses competitive. The Perkins Act can help close the gap that threatens America's long-term competitiveness. It is essential that we take advantage of the opportunity we have during this reauthorization process to improve the link between education and relevant academic and skills preparation. By so doing, we will create a pathway to prosperity for American workers and businesses alike, that both will make good use of for years to come.

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

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

S. 250

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Carl D. Perkins Career and Technical Education Improvement Act of 2005''.

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

SEC. 2. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.).

SEC. 3. PURPOSE.

Section 2 (20 U.S.C. 2301) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in paragraph (1), by striking ''standards'' and inserting ''and technical standards, and to assist students in meeting such standards, especially in preparation for high skill, high wage, or high demand occupations in emerging or established professions'';

(3) in paragraph (2), by inserting ''challenging'' after ''integrate'';

(4) in paragraph (3), by striking ''and'' after the semicolon;

(5) in paragraph (4)—

(A) by inserting ''conducting and'' before ''disseminating national'';

(B) by inserting ''disseminating information on best practices,'' after ''national research,''; and

(C) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following:

''(5) promoting leadership and professional development at the State and local levels, and developing research and best practices for improving the quality of career and technical education teachers, faculty, principals, administrators, and counselors;

''(6) supporting partnerships among secondary schools, postsecondary institutions, area career technical centers, business and industry, professional associations, and intermediaries; and

''(7) developing a highly skilled workforce needed to keep America competitive in the global economy in conjunction with other Federal education and training programs, including workforce investment programs, that provide lifelong learning for the workforce of today and tomorrow.''.

SEC. 4. DEFINITIONS.

Section 3 (20 U.S.C. 2302) is amended—

(1) in paragraph (2), by inserting '', including employment statistics and information relating to national, regional, and local labor market areas, as provided pursuant to section 118, and career ladder information, where appropriate'' after ''to enter'';

(2) in paragraph (3)—

(A) in the paragraph heading, by striking ''VOCATIONAL'' and inserting ''CAREER''; and

(B) by striking ''vocational'' each place the term appears and inserting ''career'';

(3) by striking paragraph (4);

(4) by redesignating paragraphs (5) through (30) as paragraphs (10) through (35), respectively;

(5) by inserting after paragraph (3) the following:

''(4) ARTICULATION AGREEMENT.—The term 'articulation agreement' means a written commitment, approved annually by the relevant administrators of the secondary and postsecondary institutions, to a program that is designed to provide students with a nonduplicative sequence of progressive achievement leading to technical skill proficiency, a credential, a certificate, or a degree, and linked through credit transfer agreements.

''(5) CAREER AND TECHNICAL EDUCATION.—The term 'career and technical education' means organized educational activities that—

''(A) offer a sequence of courses (which may include technical learning experiences) that—

''(i) provides individuals with the challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers in emerging and established professions; and

''(ii) may lead to technical skill proficiency, a credential, a certificate, or a degree; and

''(B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, of an individual.

''(6) CAREER AND TECHNICAL EDUCATION STUDENT.—The term 'career and technical education student' means a student who enrolls in a clearly defined sequence of career and technical education courses leading to attainment of technical skill proficiency, a credential, a certificate, or a degree.

''(7) CAREER AND TECHNICAL STUDENT ORGANIZATION.—

''(A) IN GENERAL.—The term 'career and technical student organization' means an organization for individuals enrolled in a career and technical education program that engages in career and technical education activities as an integral part of the instructional program.

''(B) STATE AND NATIONAL UNITS.—An organization described in subparagraph (A) may have State and national units that aggregate the work and purposes of instruction in career and technical education at the local level.

''(8) CAREER GUIDANCE AND ACADEMIC COUNSELING.—The term 'career guidance and academic counseling' means providing access to information regarding career awareness and planning with respect to an individual's occupational and academic future that shall involve guidance and counseling with respect to career options, financial aid, and postsecondary options.

''(9) CAREER PATHWAY.—The term 'career pathway' means a coordinated and nonduplicative sequence of courses (which may include technical learning experiences) and associated credits that—

''(A) shall identify both secondary and postsecondary education elements;

''(B) shall include challenging academic and career and technical education content;

''(C) may include the opportunity for secondary students to participate in dual or concurrent enrollment programs or other ways to acquire postsecondary credits; and

''(D) may culminate in technical skill proficiency, a credential, a certificate, or a degree.'';

(6) in paragraph (10) (as redesignated by paragraph (4) of this section), by striking ''5206'' and inserting ''5210'';

(7) by redesignating paragraphs (11) through (35) (as redesignated by paragraph (4) of this section) as paragraphs (12) through (36), respectively;

(8) by inserting after paragraph (10) (as redesignated by paragraph (4) of this section) the following:

''(11) COMMUNITY COLLEGE.—The term 'community college'—

''(A) means an institution of higher education, as defined in section 101 of the Higher Education Act of 1965, that provides not less than a 2-year program that is acceptable for full credit toward a baccalaureate degree; and

''(B) includes tribally controlled colleges or universities.'';

(9) in paragraph (12) (as redesignated by paragraph (7) of this section)—

(A) by striking ''method of instruction'' and inserting ''method''; and

(B) by striking ''vocational'' and inserting ''career'';

(10) by redesignating paragraphs (13) through (36) (as redesignated by paragraph (7) of this section) as paragraphs (14) through (37), respectively;

(11) by inserting after paragraph (12) the following:

''(13) CORE ACADEMIC SUBJECTS.—The term 'core academic subjects' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that under this Act such subjects included in such term shall be only those subjects in a secondary school context.'';

(12) in paragraph (16) (as redesignated by paragraph (10) of this section), by striking ''vocational'' both places the term appears and inserting ''career'';

(13) in paragraph (17) (as redesignated by paragraph (10) of this section)—

(A) in subparagraph (A), by striking ''an institution of higher education'' and inserting ''a public or nonprofit private institution of higher education that offers career and technical education courses that lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree''; and

(B) in subparagraph (C), by striking ''vocational'' and inserting ''career'';

(14) in paragraph (18)(A) (as redesignated by paragraph (10) of this section), by striking ''agency, an area vocational'' and inserting ''agency (including a public charter school that operates as a local educational agency), an area career'';

(15) by redesignating paragraphs (20) through (37) (as redesignated by paragraph (10) of this section) as paragraphs (21) through (38), respectively;

(16) by inserting after paragraph (19) (as redesignated by paragraph (10) of this section) the following:

''(20) GRADUATION AND CAREER PLAN.—The term 'graduation and career plan' means a written plan for a secondary career and technical education student, that—

''(A) is developed with career guidance and academic counseling or other professional staff, and in consultation with parents, not later than in the first year of secondary school or upon enrollment in career and technical education;

''(B) is reviewed annually and modified as needed;

''(C) includes relevant information on—

''(i) secondary school requirements for graduating with a diploma;

''(ii) postsecondary education admission requirements; and

''(iii) high skill, high wage, or high demand occupations and nontraditional fields in emerging and established professions, and labor market indicators; and

''(D) states the student's secondary school graduation goals, postsecondary education and training, or employment goals, and identifies 1 or more career pathways that correspond to the goals.'';

(17) in paragraph (25) (as redesignated by paragraph (15) of this section)—

(A) in the paragraph heading, by striking ''TRAINING AND EMPLOYMENT'' and inserting ''FIELDS''; and

(B) by striking ''training and employment'' and inserting ''fields'';

(18) in paragraph (26) (as redesignated by paragraph (15) of this section), by striking ''the Commonwealth'' and all that follows through the period and inserting ''and the Commonwealth of the Northern Mariana Islands.'';

(19) by redesignating paragraphs (31) through (38) (as redesignated by paragraph (15) of this section) as paragraphs (32) through (39), respectively;

(20) by inserting after paragraph (30) (as redesignated by paragraph (15) of this section) the following:

''(31) SELF-SUFFICIENCY.—The term 'self-sufficiency' means a standard that is adopted, calculated, or commissioned by a local area or State, and which adjusts for local factors, in specifying the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.'';

(21) in paragraph (32) (as redesignated by paragraph (19) of this section)—

(A) in subparagraph (C), by striking ''training and employment'' and inserting ''fields''; and

(B) in subparagraph (F), by striking ''individuals with other barriers to educational achievement, including'';

(22) in paragraph (34) (as redesignated by paragraph (19) of this section) by striking '', and instructional aids and devices'' and inserting ''instructional aids, and work supports'';

(23) by striking paragraph (35) (as redesignated by paragraph (19) of this section) and inserting the following:

''(35) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

''(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

''(B) integrates academic and career and technical education instruction, and utilizes work-based and worksite learning where appropriate and available;

''(C) provides technical preparation in a career field, including high skill, high wage, or high demand occupations;

''(D) builds student competence in technical skills and in core academic subjects, as appropriate, through applied, contextual, and integrated instruction, in a coherent sequence of courses;

''(E) leads to technical skill proficiency, a credential, a certificate, or a degree, in a specific career field;

''(F) leads to placement in appropriate employment or to further education; and

''(G) utilizes career pathways, to the extent practicable.'';

(24) in paragraph (37) (as redesignated by paragraph (19) of this section)—

(A) in the paragraph heading, by striking ''VOCATIONAL'' and inserting ''CAREER'';

(B) in the matter preceding subparagraph (A)—

(i) by striking ''vocational'' and inserting ''career'';

(ii) by striking ''paragraph (2)'' and inserting ''subsection (a)(2)''; and

(iii) by striking ''paragraph (5)(A)'' and inserting ''subsection (a)(5)''; and

(C) in subparagraph (F), by striking ''vocational'' and inserting ''career''; and

(25) by striking paragraphs (38) and (39) (as redesignated by paragraph (19) of this section).

SEC. 5. TRANSITION PROVISIONS.

Section 4 (20 U.S.C. 2303) is amended by striking ''the Carl D. Perkins Vocational and Applied Technology Education Act'' and all that follows through the period and inserting ''this Act, as this Act was in effect on the day before the date of enactment of the Carl D. Perkins Career and Technical Education Improvement Act of 2005. Each eligible agency shall be assured a full fiscal year for transition to plan for and implement the requirements of this Act.''.

SEC. 6. LIMITATION.

Section 6 (20 U.S.C. 2305) is amended by striking the second sentence.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 8 (20 U.S.C. 2307) is amended—

(1) by striking ''title II'' and inserting ''part D of title I''; and

(2) by striking ''1999 through 2003'' and inserting ''2006 through 2011''.

TITLE I—CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

SEC. 101. CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES.

Title I (20 U.S.C. 2321 et seq.) is amended by striking the title heading and inserting the following:

''TITLE I—CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES''.

SEC. 102. RESERVATIONS AND STATE ALLOTMENT.

Section 111(a) (20 U.S.C. 2321(a)) is amended—

(1) in paragraph (1)(C), by striking ''2001 through 2003,'' and inserting ''2006 through 2011, not more than'';

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking ''paragraph (1)'' and inserting ''paragraph (1), that are not allotted under paragraph (5),'';

(3) in paragraph (3)—

(A) in subparagraph (B), by striking ''(or in the case'' and all that follows through ''1998)''; and

(B) in subparagraph (C)—

(i) in clause (i)(I), by striking ''(or in the case'' and all that follows through ''1998)''; and

(ii) in clause (ii)(II), by striking ''(or in the case'' and all that follows through ''1998)''; and

(4) by adding at the end the following:

''(5) FORMULA FOR AMOUNTS IN EXCESS OF THE FISCAL YEAR 2005 FUNDING LEVEL.—

''(A) IN GENERAL.—For any fiscal year for which the remainder of the sums appropriated under section 8 and not reserved under paragraph (1) exceeds the remainder of the sums appropriated under section 8 and not reserved under paragraph (1) for fiscal year 2005, such excess amount shall be allotted to the States according to the formula under subparagraphs (A) through (D) of paragraph (2).

''(B) MINIMUM ALLOTMENT.—

''(i) IN GENERAL.—Notwithstanding any other provision of law and subject to clause (ii), no State shall receive for a fiscal year under this paragraph less than ½ of 1 percent of the excess amount described in subparagraph (A).

''(ii) REQUIREMENT.—No State, by reason of the application of clause (i), shall be allotted under this paragraph for a fiscal year more than the amount determined by multiplying—

''(I) the number of individuals in the State counted under paragraph (2); by

''(II) 185 percent of the national average per pupil payment made with the excess amount described in subparagraph (A) for that year.''.

SEC. 103. WITHIN STATE ALLOCATION.

Section 112 (20 U.S.C. 2322) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by adding ''and'' after the semicolon; and

(B) by striking paragraphs (2) and (3) and inserting the following:

''(2) not more than 15 percent for—

''(A) State leadership activities described in section 124, of which—

''(i) an amount determined by the eligible agency shall be made available to serve individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

''(ii) not less than $60,000 shall be available for services that prepare individuals for nontraditional fields; and

''(B) administration of the State plan, which may be used for the costs of—

''(i) developing the State plan;

''(ii) reviewing the local plans;

''(iii) monitoring and evaluating program effectiveness;

''(iv) assuring compliance with all applicable Federal laws;

''(v) providing technical assistance; and

''(vi) supporting and developing State data systems relevant to the provisions of this Act.'';

(2) in subsection (b), by striking ''subsection (a)(3)'' both places the term appears and inserting ''subsection (a)(2)(B)''; and

(3) by striking subsection (c) and inserting the following:

''(c) RESERVE.—From amounts made available under subsection (a)(1) to carry out this subsection, an eligible agency may—

''(1) award grants to eligible recipients, or consortia of eligible recipients, for career and technical education activities described in section 135 in—

''(A) rural areas; or

''(B) areas with high percentages or high numbers of career and technical education students;

''(2) reserve funds, with the approval of participating eligible recipients, for—

''(A) innovative statewide initiatives that demonstrate benefits for eligible recipients, which may include—

''(i) developing and implementing technical assessments;

''(ii) improving the professional development of career and technical education teachers, faculty, principals, and administrators; and

''(iii) establishing, enhancing, and supporting systems for accountability data collection or reporting purposes; or

''(B) the development and implementation of career pathways or career clusters; and

''(3) carry out activities described in paragraphs (1) and (2).''.

SEC. 104. ACCOUNTABILITY.

Section 113 (20 U.S.C. 2323) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (a)—

(A) by striking ''a State performance accountability system'' and inserting ''and support State and local performance accountability systems''; and

(B) by inserting ''and its eligible recipients'' after ''of the State'';

(3) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''paragraph (2)(A)'' and inserting ''subparagraphs (A) and (B) of paragraph (2)''; and

(ii) in subparagraph (B), by striking ''(2)(B)'' and inserting ''(2)(C)'';

(B) in paragraph (2)—

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

''(A) CORE INDICATORS OF PERFORMANCE FOR SECONDARY CAREER AND TECHNICAL EDUCATION STUDENTS.—Each eligible agency shall identify in the State plan core indicators of performance for secondary career and technical education students that include, at a minimum, measures of each of the following:

''(i) Student achievement on technical assessments and attainment of career and technical skill proficiencies that are aligned with nationally recognized industry standards, if available and appropriate.

''(ii) Student attainment of challenging academic content standards and student academic achievement standards, as adopted by the State under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 and measured by the academic assessments described in section 1111(b)(3) of such Act, consistent with State requirements.

''(iii) Student rates of attainment of—

''(I) a secondary school diploma;

''(II) the recognized equivalent of a secondary school diploma;

''(III) technical skill proficiency;

''(IV) a credential;

''(V) a certificate; and

''(VI) a degree.

''(iv) Placement in postsecondary education, military service, apprenticeship programs, or employment.

''(v) Student participation in, and completion of, career and technical education programs that lead to employment in nontraditional fields.'';

(ii) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

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

''(B) CORE INDICATORS OF PERFORMANCE FOR POSTSECONDARY CAREER AND TECHNICAL STUDENTS.—Each eligible agency shall identify in the State plan core indicators of performance for postsecondary career and technical education students that include, at a minimum, measures of each of the following:

''(i) Student achievement on technical assessments and attainment of career and technical skill proficiencies that are aligned with nationally recognized industry standards, if available and appropriate.

''(ii) Student attainment of technical skill proficiency, a credential, a certificate, or a degree, or retention in postsecondary education, including transfer to a baccalaureate degree program.

''(iii) Placement in military service, apprenticeship programs, or employment.

''(iv) Student participation in, and completion of, career and technical education programs that lead to employment in nontraditional fields.

''(v) Increase in earnings, where available.'';

(iv) in subparagraph (C) (as redesignated by clause (ii) of this subparagraph), by striking ''the title.'' and inserting ''this title, such as attainment of self-sufficiency.'';

(v) in subparagraph (D) (as redesignated by clause (ii) of this subparagraph), by inserting ''career and technical education'' after ''developed State'';

(vi) in subparagraph (E) (as redesignated by clause (ii) of this subparagraph)—

(I) by striking ''this paragraph'' and inserting ''subparagraphs (A) and (B)''; and

(II) by striking ''recipients.'' and inserting ''recipients, and shall meet the requirements of this section.''; and

(vii) by adding at the end the following:

''(F) ALIGNMENT OF PERFORMANCE INDICATORS.—In the course of identifying core indicators of performance and additional indicators of performance, States shall, to the greatest extent possible, define the indicators so that substantially similar information gathered for other State and Federal programs, or any other purpose, is used to meet the requirements of this section.'';

(C) in paragraph (3)—

(i) in the paragraph heading, by striking ''LEVELS'' and inserting ''STATE LEVELS'';

(ii) in subparagraph (A)—

(I) in clause (i)—

(aa) by striking ''paragraph (2)(A)'' and inserting ''subparagraphs (A) and (B) of paragraph (2)'';

(bb) by inserting ''after taking into account the local adjusted levels of performance and'' after ''eligible agency,''; and

(cc) by striking subclause (II) and inserting the following:

''(II) require the eligible recipients to make continuous and significant improvement in career and technical achievement of career and technical education students, including special populations.'';

(II) in clause (v)—

(aa) in the clause heading, by striking ''3RD, 4TH, AND 5TH'' and inserting ''SUBSEQUENT'';

(bb) by striking ''third program year'' and inserting ''third and fifth program years''; and

(cc) by striking ''third, fourth, and fifth'' and inserting ''corresponding subsequent'';

(III) in clause (vi)(II), by inserting ''and significant'' after ''continuous''; and

(IV) in clause (vii), by striking ''or (vi)'' and inserting ''or (v)''; and

(iii) in subparagraph (B), by striking ''(2)(B)'' and inserting ''(2)(C)''; and

(D) by adding at the end the following:

''(4) LOCAL LEVELS OF PERFORMANCE.—

''(A) LOCAL ADJUSTED LEVELS OF PERFORMANCE FOR CORE INDICATORS OF PERFORMANCE.—

''(i) IN GENERAL.—Each eligible recipient shall accept the State adjusted levels of performance established under paragraph (3) as local adjusted levels of performance, or negotiate with the State to reach agreement on new local adjusted levels of performance, for each of the core indicators of performance described in subparagraphs (A) and (B) of paragraph (2) for career and technical education activities authorized under this title. The levels of performance established under this subparagraph shall, at a minimum—

''(I) be expressed in a percentage or numerical form, so as to be objective, quantifiable, and measurable; and

''(II) require the eligible recipient to make continuous and significant improvement in career and technical achievement of career and technical education students.

''(ii) IDENTIFICATION IN THE LOCAL PLAN.—Each eligible recipient shall identify, in the local plan submitted under section 134, levels of performance for each of the core indicators of performance for the first 2 program years covered by the local plan.

''(iii) AGREEMENT ON LOCAL ADJUSTED LEVELS OF PERFORMANCE FOR FIRST 2 YEARS.—The eligible agency and each eligible recipient shall reach agreement on the eligible recipient's levels of performance for each of the core indicators of performance for the first 2 program years covered by the local plan, taking into account the levels identified in the local plan under clause (ii) and the factors described in clause (v). The levels of performance agreed to under this clause shall be considered to be the local adjusted levels of performance for the eligible recipient for such years and shall be incorporated into the local plan prior to the approval of such plan.

''(iv) AGREEMENT ON LOCAL ADJUSTED LEVELS OF PERFORMANCE FOR SUBSEQUENT YEARS.—Prior to the third and fifth program years covered by the local plan, the eligible agency and each eligible recipient shall reach agreement on the local adjusted levels of performance for each of the core indicators of performance for the corresponding subsequent program years covered by the local plan, taking into account the factors described in clause (v). The local adjusted levels of performance agreed to under this clause shall be considered to be the local adjusted levels of performance for the eligible recipient for such years and shall be incorporated into the local plan.

''(v) FACTORS.—The agreement described in clause (iii) or (iv) shall take into account—

''(I) how the levels of performance involved compare with the local adjusted levels of performance established for other eligible recipients, taking into account factors including the characteristics of participants when the participants entered the program and the services or instruction to be provided; and

''(II) the extent to which the local adjusted levels of performance involved promote continuous and significant improvement on the core indicators of performance by the eligible recipient.

''(vi) REVISIONS.—If unanticipated circumstances arise with respect to an eligible

recipient resulting in a significant change in the factor described in clause (v)(II), the eligible recipient may request that the local adjusted levels of performance agreed to under clause (iii) or (iv) be revised. The eligible agency shall issue objective criteria and methods for making such revisions.

''(B) LEVELS OF PERFORMANCE FOR ADDITIONAL INDICATORS.—Each eligible recipient may identify, in the local plan, local levels of performance for any additional indicators of performance described in paragraph (2)(C). Such levels shall be considered to be the local levels of performance for purposes of this title.

''(C) REPORT.—Each eligible recipient that receives an allocation under section 131 shall publicly report, on an annual basis, its progress in achieving the local adjusted levels of performance on the core indicators of performance.''; and

(4) by striking subsection (c)(1)(B) and inserting:

''(B) information on the levels of performance achieved by the State with respect to the additional indicators of performance, including the levels of performance disaggregated for postsecondary institutions, by special populations, and for secondary institutions, by special populations and by the categories described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965, except that such disaggregation shall not be required in a case in which the number of individuals in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual.''.

SEC. 105. NATIONAL ACTIVITIES.

Section 114 (20 U.S.C. 2324) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (a)(1), by striking '', including an analysis of performance data regarding special populations'' and inserting '', including an analysis of performance data that is disaggregated for postsecondary institutions, by special populations, and for secondary institutions, by special populations and by the categories described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965, except that such disaggregation shall not be required in a case in which the number of individuals in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual'';

(3) in subsection (c)—

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

''(2) INDEPENDENT ADVISORY PANEL.—

''(A) IN GENERAL.—The Secretary shall appoint an independent advisory panel to advise the Secretary on the implementation of the assessment described in paragraph (3), including the issues to be addressed and the methodology of the studies involved to ensure that the assessment adheres to the highest standards of quality.

''(B) MEMBERS.—The advisory panel shall consist of—

''(i) educators, principals, and administrators (including State directors of career and technical education), with expertise in the integration of academic and career and technical education;

''(ii) experts in evaluation, research, and assessment;

''(iii) representatives of labor organizations and businesses, including small businesses;

''(iv) parents;

''(v) career guidance and academic counseling professionals; and

''(vi) other individuals and intermediaries with relevant expertise.

''(C) INDEPENDENT ANALYSIS.—The advisory panel shall transmit to the Secretary and to the relevant committees of Congress an independent analysis of the findings and recommendations resulting from the assessment described in paragraph (3).

''(D) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this paragraph.'';

(B) in paragraph (3)—

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

''(A) IN GENERAL.—From amounts made available under subsection (d), the Secretary shall provide for the conduct of an independent evaluation and assessment of career and technical education programs under this Act, including the implementation of the Carl D. Perkins Career and Technical Education Improvement Act of 2005, to the extent practicable, through studies and analyses conducted independently through grants, contracts, and cooperative agreements that are awarded on a competitive basis.'';

(ii) in subparagraph (B)—

(I) by striking clause (iii) and inserting the following:

''(iii) the preparation and qualifications of teachers and faculty of career and technical education, as well as shortages of such teachers and faculty;'';

(II) by striking clause (v) and inserting the following:

''(v) academic and career and technical education achievement and employment outcomes of career and technical education students, including analyses of—

''(I) the number of career and technical education students and tech-prep students who meet the State adjusted levels of performance established under section 113;

''(II) the extent and success of integration of challenging academic and career and technical education for students participating in career and technical education programs;

''(III) the extent to which career and technical education programs prepare students, including special populations, for subsequent employment in high skill, high wage occupations, or participation in postsecondary education; and

''(IV) the number of career and technical education students receiving a high school diploma;'';

(III) in clause (vi), by inserting '', and career and technical education students' preparation for employment'' after ''programs''; and

(IV) in clause (viii), by inserting ''and local'' after ''State'' both places such term appears; and

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking ''Committee on Education'' and all that follows through ''Senate'' and inserting ''relevant committees of Congress''; and

(bb) by striking ''2002'' both places it appears and inserting ''2009''; and

(II) in clause (ii), by striking ''Committee on Education'' and all that follows through ''Senate'' and inserting ''relevant committees of Congress'';

(C) in paragraph (4)(B), by striking ''Committee on Education'' and all that follows through ''Senate'' and inserting ''relevant committees of Congress'';

(D) in paragraph (5)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking ''higher education'' and all that follows through ''centers'' and inserting ''higher education offering comprehensive graduate programs in career and technical education that shall be the primary recipient and shall collaborate with a public or private nonprofit organization or agency, or a consortium of such institutions, organizations, or agencies, to establish a national research center'';

(II) in clause (i)—

(aa) by inserting ''and evaluation'' after ''to carry out research''; and

(bb) by inserting '', including special populations,'' after ''participants'';

(III) by redesignating clauses (ii), (iii), and (iv), as clauses (iii), (iv), and (v), respectively;

(IV) by inserting after clause (i) the following:

''(ii) to carry out research for the purpose of developing, improving, and identifying the most successful methods for successfully addressing the needs of employers in high skill, high wage business and industry, including evaluation and scientifically based research of—

''(I) collaboration between career and technical education programs and business and industry;

''(II) academic and technical skills required to respond to the challenge of a global economy and rapid technological changes; and

''(III) technical knowledge and skills required to respond to needs of a regional or sectoral workforce, including small business;'';

(V) in clause (iii) (as redesignated by subclause (III) of this clause), by inserting ''that are integrated with challenging academic instruction'' before '', including''; and

(VI) by striking clause (iv) (as redesignated by subclause (III) of this clause) and inserting the following:

''(iv) to carry out scientifically based research, where appropriate, that can be used to improve preparation and professional development of teachers, faculty, principals, and administrators and student learning in the career and technical education classroom, including—

''(I) effective in-service and pre-service teacher and faculty education that assists career and technical education programs in—

''(aa) integrating those programs with academic content standards and student academic achievement standards, as adopted by States under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965; and

''(bb) promoting technical education aligned with industry-based standards and certifications to meet regional industry needs;

''(II) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include serving as a repository for information on career and technical education skills, State academic standards, and related materials; and

''(III) the recruitment and retention of career and technical education teachers, faculty, counselors, principals, and administrators, including individuals in groups underrepresented in the teaching profession; and'';

(ii) in subparagraph (B)—

(I) by striking ''or centers'' both places the term appears; and

(II) by striking ''Committee on Education'' and all that follows through ''Senate'' and inserting ''relevant committees of Congress'';

(iii) in subparagraph (C), by striking ''or centers''; and

(iv) by adding at the end the following:

''(D) INDEPENDENT GOVERNING BOARD.—

''(i) IN GENERAL.—An institution of higher education that desires a grant, contract, or cooperative agreement under this paragraph shall identify, in its application, an independent governing board for the center established pursuant to this paragraph.

''(ii) MEMBERS.—The independent governing board shall consist of the following:

''(I) Two representatives of secondary career and technical education.

''(II) Two representatives of postsecondary career and technical education.

''(III) Two representatives of eligible agencies.

''(IV) Two representatives of business and industry.

''(V) Two representatives of career and technical teacher preparation institutions.

''(VI) Two nationally recognized researchers in the field of career and technical education.

''(iii) COORDINATION.—The independent governing board shall ensure that the research and dissemination activities carried out by the center are coordinated with the research activities carried out by the Secretary.'';

(E) in paragraph (6)(B)(ii), by striking ''or centers''; and

(F) by striking paragraph (8); and

(4) by adding at the end the following:

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2011.''.

SEC. 106. ASSISTANCE FOR THE OUTLYING AREAS.

Section 115 (20 U.S.C. 2325) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''the Republic of the Marshall Islands, the Federated States of Micronesia,'';

(B) in paragraph (1), by striking ''training and retraining;'' and inserting ''preparation;'';

(C) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(D) by inserting after paragraph (1) the following:

''(2) professional development for teachers, faculty, principals, and administrators;''; and

(3) in subsection (d)—

(A) by striking ''the Republic of the Marshall Islands, the Federated States of Micronesia, and''; and

(B) by striking ''2001'' and inserting ''2007''.

SEC. 107. NATIVE AMERICAN PROGRAM.

Section 116 (20 U.S.C. 2326) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (a)(5), by adding a period at the end;

(3) in subsection (b)—

(A) in paragraph (1), by striking ''(d)'' and inserting ''(c)''; and

(B) in paragraph (2), by striking ''(other than in subsection (i))'';

(4) in subsection (d), by striking ''section an'' and inserting ''section, an'';

(5) in subsection (e), by striking ''paragraph'' and inserting ''section''; and

(6) in subsection (h), by striking ''which are recognized by the Governor of the State of Hawaii''.

SEC. 108. TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS.

Section 117 (20 U.S.C. 2327) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 117. TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS.'';

(2) by striking ''vocational'' each place the term appears and inserting ''career'';

(3) in subsection (g)—

(A) in paragraph (1), by striking ''The Secretary'' and inserting ''On an annual basis, the Secretary'';

(B) in paragraph (2)(B), by striking ''2000'' and inserting ''2007''; and

(C) in paragraph (3)(C), by striking ''beginning'' and all that follows through the period and inserting ''beginning on the date of enactment of the Carl D. Perkins Career and Technical Education Improvement Act of 2005.'';

(4) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively;

(5) by inserting after subsection (g) the following:

''(h) APPEALS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall provide a tribally controlled postsecondary career and technical institution with a hearing on the record before an administrative law judge with respect to the following determinations:

''(A) A determination that such institution is not eligible for a grant under this section.

''(B) A determination regarding the calculation of the amount of a grant awarded under this section.

''(2) PROCEDURE FOR APPEAL.—To appeal a determination described in paragraph (1), a tribally controlled postsecondary career and technical institution shall—

''(A) in the case of an appeal based on a determination that such institution is not eligible for a grant under this section, file a notice of appeal with the Secretary not later than 30 days after receipt of such determination; and

''(B) in the case of an appeal based on a determination regarding the calculation of the amount of a grant awarded under this section—

''(i) file a notice of appeal with the Secretary not later than 30 days after receipt of the Secretary's notification of the grant amount; and

''(ii) identify the amount of funding that gives rise to such appeal.

''(3) WITHHOLDING OF AMOUNT.—If a tribally controlled postsecondary career and technical institution appeals a determination described in paragraph (1), the Secretary shall withhold the amount in dispute from the award of grant funds under this section until such time as the administrative law judge has issued a written decision on the appeal.''; and

(6) by striking subsection (j) (as redesignated by paragraph (4) of this section) and inserting the following:

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.''.

SEC. 109. OCCUPATIONAL AND EMPLOYMENT INFORMATION.

Section 118 (20 U.S.C. 2328) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''(f)'' and inserting ''(g)'';

(B) in paragraph (1)—

(i) in subparagraph (A), by striking ''(b)'' both places it appears and inserting ''(c)'';

(ii) in subparagraph (B), by striking ''(b)'' and inserting ''(c)''; and

(iii) in subparagraph (C), by striking ''(b)'' and inserting ''(c)''; and

(C) in paragraph (2), by striking ''(b)'' both places it appears and inserting ''(c)'';

(2) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively;

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

''(b) STATE APPLICATION.—

''(1) IN GENERAL.—Each State desiring assistance under this section shall submit an application to the Secretary at the same time the State submits its State plan under section 122, in such manner, and accompanied by such additional information, as the Secretary may reasonably require.

''(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

''(A) a description of how the State entity designated in subsection (c) will provide information based on labor market trends to inform program development; and

''(B) information about the academic content standards and student academic achievement standards adopted by the State under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965.'';

(4) in subsection (c) (as redesignated by paragraph (2) of this section)—

(A) in paragraph (1), by striking ''individuals'' and all that follows through the semicolon and inserting ''students and parents, including postsecondary education and training, including preparation for high skill, high wage, or high demand occupations and nontraditional fields in emerging or established professions;'';

(B) in paragraph (2), by inserting ''academic and career and technical'' after ''relate'';

(C) by striking paragraph (3) and inserting the following:

''(3) to equip teachers, faculty, administrators, and counselors with the knowledge, skills, and occupational information needed to assist parents and all students, especially special populations underrepresented in certain careers, with career exploration, educational opportunities, education financing, and exposure to high skill, high wage, or high demand occupations and nontraditional fields;'';

(D) in paragraph (4), by striking ''such entities;'' and inserting ''such entities, with an emphasis on high skill, high wage, or high demand occupations in emerging or established professions;'';

(E) in paragraph (5), by striking ''and'' after the semicolon;

(F) in paragraph (6), by striking the period and inserting ''; and''; and

(G) by adding at the end the following:

''(7) to provide information, if available, for each occupation, on—

''(A) the average earnings of an individual in the occupation at entry level and after 5 years of employment;

''(B) the expected lifetime earnings; and

''(C) the expected future demand for the occupation, based on employment projections.'';

(5) in subsection (d)(1) (as redesignated by paragraph (2) of this section), by striking ''(b)'' both places it appears and inserting ''(c)'';

(6) in subsection (e)(1) (as redesignated by paragraph (2) of this section), by striking ''(b)'' and inserting ''(c)'';

(7) in subsection (f)(1) (as redesignated by paragraph (2) of this section), by striking ''an identification'' and inserting ''a description''; and

(8) in subsection (g) (as redesignated by paragraph (2) of this section), by striking ''1999 through 2003'' and inserting ''2006 through 2011''.

SEC. 110. STATE ADMINISTRATION.

Section 121 (20 U.S.C. 2341) is amended—

(1) by redesignating subsection (a)(2) as subsection (b) and indenting appropriately;

(2) by redesignating subparagraphs (A) through (D) of subsection (a)(1) as paragraphs (1) through (4), respectively, and indenting appropriately;

(3) by redesignating clauses (i) and (ii) of paragraph (4) (as redesignated by paragraph (2) of this section) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(4) by striking the following:

''(a) ELIGIBLE AGENCY RESPONSIBILITIES.—

''(1) IN GENERAL.—The responsibilities'' and inserting the following:

''(a) ELIGIBLE AGENCY RESPONSIBILITIES.—The responsibilities'';

(5) in subsection (a)(1) (as redesignated by paragraph (2) of this section), by striking ''training and employment'' and inserting ''fields'';

(6) in subsection (a)(2) (as redesignated by paragraph (2) of this section)—

(A) by inserting ''teacher and faculty preparation programs,'' after ''teachers,''; and

(B) by inserting ''all types and sizes of'' after ''representatives of''; and

(7) in subsection (b) (as redesignated by paragraph (1) of this section), by striking ''paragraph (1)'' and inserting ''subsection (a)''.

SEC. 111. STATE PLAN.

Section 122 (20 U.S.C. 2342) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''5'' and inserting ''6''; and

(ii) by adding at the end the following: ''Each eligible agency may submit a transition plan during the first full year of implementation of this Act after the date of enactment of the Carl D. Perkins Career and Technical Education Improvement Act of 2005. The transition plan shall fulfill the eligible agency's State plan submission obligation under this section.''; and

(B) in paragraph (2)(B), by striking ''5 year State plan'' and inserting ''6-year period'';

(3) by striking subsection (b)(1) and inserting the following:

''(1) IN GENERAL.—The eligible agency shall develop the State plan in consultation with academic and career and technical education teachers, faculty, principals, and administrators, career guidance and academic counselors, eligible recipients, parents, students, the State tech-prep coordinator and representatives of tech-prep consortia (if applicable), interested community members (including parent and community organizations), representatives of special populations, representatives of business (including small business) and industry, and representatives of labor organizations in the State, and shall consult the Governor of the State with respect to such development.'';

(4) by striking subsection (c) and inserting the following:

''(c) PLAN CONTENTS.—The State plan shall include information that—

''(1) describes the career and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of—

''(A) how the eligible agency will support eligible recipients in developing or implementing career pathways for career and technical education content areas that are designed to meet relevant workforce needs, including how the eligible agency will—

''(i) support eligible recipients in developing articulation agreements between secondary and postsecondary institutions;

''(ii) support eligible recipients in using labor market information to identify career pathways that prepare individuals for high skill, high wage, or high demand occupations;

''(iii) make available information about career pathways offered by eligible recipients; and

''(iv) consult with business and industry and use industry-recognized standards and assessments, if appropriate;

''(B) the secondary and postsecondary career and technical education programs to be carried out, including programs that will be carried out by the eligible agency to develop, improve, and expand access to quality technology in career and technical education programs;

''(C) the criteria that will be used by the eligible agency to approve eligible recipients for funds under this title, including criteria to assess the extent to which the local plan will—

''(i) promote higher levels of academic achievement;

''(ii) promote higher levels of technical skill attainment; and

''(iii) identify and address workforce needs;

''(D) how programs at the secondary level will prepare career and technical education students, including special populations to graduate from high school with a diploma;

''(E) how such programs will prepare career and technical education students, including special populations, both academically and technically, for opportunities in postsecondary education or entry into high skill, high wage, or high demand occupations in emerging or established occupations, and how participating students will be made aware of such opportunities; and

''(F) how funds will be used to improve or develop new career and technical education courses in high skill, high wage, or high demand occupations that are aligned with business needs and industry standards, as appropriate—

''(i) at the secondary level that are aligned with challenging academic content standards and student academic achievement standards adopted by the State under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965; and

''(ii) at the postsecondary level that are relevant and challenging;

''(2) describes how career and technical education teachers, faculty, principals, administrators, and career guidance and academic counselors will be provided comprehensive initial preparation and professional development, including through programs and activities that—

''(A) promote the integration of challenging academic and career and technical education curriculum development, including opportunities for teachers to jointly develop and implement curriculum and pedagogical strategies with appropriate academic teachers;

''(B) increase the academic and career and technical education knowledge of career and technical education teachers and faculty;

''(C) are high-quality, sustained, intensive, focused on instruction, directly related to industry standards, and includes structured induction and mentoring components for new personnel, with an emphasis on identifying and addressing the needs of local businesses, including small businesses;

''(D) ensure an increasing number of career and technical education teachers and faculty meet teacher certification and licensing requirements reflecting the needs of their subject area or areas;

''(E) equip them with the knowledge and skills needed to work with and improve instruction for special populations;

''(F) assist in accessing and utilizing data, including labor market indicators, student achievement, and assessments;

''(G) enhance the leadership capacity of principals and administrators;

''(H) are integrated with professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 and title II of the Higher Education Act of 1965; and

''(I) include strategies to expose all career and technical education students to comprehensive information regarding career options that lead to high skill, high wage, or high demand occupations and nontraditional fields;

''(3) describes efforts to improve—

''(A) the recruitment and retention of career and technical education teachers, faculty, counselors, principals, and administrators, including individuals in groups underrepresented in the teaching profession; and

''(B) the transition to teaching from business and industry, including small business;

''(4) describes efforts to improve the capacity of programs and faculty at postsecondary institutions to effectively prepare career and technical education personnel, including, as appropriate, through electronically delivered distance education, and articulation agreements between 2-year technical programs and postsecondary education programs;

''(5) describes how the eligible agency will actively involve parents, academic and career and technical education teachers, faculty, principals, and administrators, career guidance and academic counselors, local businesses (including small- and medium-sized businesses and business intermediaries), and labor organizations in the planning, development, implementation, and evaluation of such career and technical education programs;

''(6) describes how funds received by the eligible agency through the allotment made under section 111 will be allocated—

''(A) among secondary school career and technical education, or postsecondary and adult career and technical education, or both, including the rationale for such allocation; and

''(B) among any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation;

''(7) describes how the eligible agency will—

''(A) use funds to improve or develop new career and technical education courses in high skill, high wage, or high demand occupations—

''(i) at the secondary level that are aligned with challenging academic content standards and student academic achievement standards adopted by the State under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965; and

''(ii) at the postsecondary level that are challenging and aligned with business needs and industry standards, as appropriate;

''(B) improve the academic and technical skills of students participating in career and technical education programs, including strengthening the academic, and career and technical, components of career and technical education programs through the integration of academics with career and technical education to ensure learning in the core academic subjects and career and technical education subjects, and provide students with strong experience in, and understanding of, all aspects of an industry;

''(C) ensure that students who participate in such career and technical education programs are taught to the same challenging academic proficiencies as are taught to all other students; and

''(D) encourage secondary school students who participate in such career and technical education programs to enroll in challenging courses in core academic subjects;

''(8) describes how the eligible agency will annually evaluate the effectiveness of such career and technical education programs, and describes, to the extent practicable, how the eligible agency is coordinating such programs to promote relevant lifelong learning and ensure nonduplication with other existing Federal programs;

''(9) describes the eligible agency's program strategies for special populations, including a description of how individuals who are members of the special populations—

''(A) will be provided with equal access to activities assisted under this title;

''(B) will not be discriminated against on the basis of their status as members of the special populations; and

''(C) will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and prepare special populations for further learning and for high skill, high wage, or high demand occupations;

''(10) how the eligible agency will collaborate in developing the State plan with—

''(A) the entity within the State with responsibility for elementary and secondary education;

''(B) the entity within the State with responsibility for public institutions engaged in postsecondary education;

''(C) State institutions such as State correctional institutions and institutions that serve individuals with disabilities; and

''(D) all other relevant State agencies with responsibility for career and technical education and training and workforce development;

''(11) describes what steps the eligible agency will take to involve representatives of eligible recipients in the development of the State adjusted levels of performance;

''(12) provides assurances that the eligible agency will comply with the requirements of this title and the provisions of the State plan, including the provision of a financial audit of funds received under this title which may be included as part of an audit of other Federal or State programs;

''(13) provides assurances that none of the funds expended under this title will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, the employees of the purchasing entity, or any affiliate of such an organization;

''(14) describes how the eligible agency will measure and report data relating to students participating in and completing career and technical education within specific career clusters in order to adequately measure the progress of the students, including special populations, at—

''(A) the secondary level, disaggregated by the categories described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965, except that such disaggregation shall not be required in a case in which the number of individuals in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual; and

''(B) the postsecondary level, disaggregated by special populations and the categories described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965, except that such disaggregation shall not be required in a case in which the number of individuals in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual;

''(15) describes how the eligible agency will adequately address the needs of students in alternative education programs, if appropriate;

''(16) describes how the eligible agency will provide local educational agencies, area career and technical education schools, and eligible institutions in the State with technical assistance;

''(17) describes how career and technical education relates to State and regional occupational opportunities;

''(18) describes the methods proposed for the joint planning and coordination of programs carried out under this title with other Federal education programs;

''(19) describes how funds will be used to promote preparation for high skill, high wage, or high demand occupations and nontraditional fields in emerging and established professions;

''(20) describes how funds will be used to serve individuals in State correctional institutions;

''(21) describes how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this title and the data the eligible agency reports to the Secretary are complete, accurate, and reliable; and

''(22) contains the description and information specified in sections 112(b)(8) and 121(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2822(b)(8) and 2841(c)) concerning the provision of services only for postsecondary students and school dropouts.'';

(5) by striking subsection (d) and inserting the following:

''(d) PLAN OPTIONS.—

''(1) SINGLE PLAN.—The eligible agency may fulfill the plan or application submission requirements of this section, section 118(b), and section 141(c) by submitting a single State plan. In such plan, the eligible agency may allow eligible recipients to fulfill the plan or application submission requirements of section 134 and subsections (a) and (b) of section 143 by submitting a single local plan.

''(2) PLAN SUBMITTED AS PART OF 501 PLAN.—The eligible agency may submit the plan required under this section as part of the plan submitted under section 501 of the Workforce Investment Act of 1998 (20 U.S.C. 9271), provided that the plan submitted pursuant to the requirement of this section meets the requirements of this Act.''; and

(6) by striking subsection (f).

SEC. 112. IMPROVEMENT PLANS.

Section 123 (20 U.S.C. 2343) is amended to read as follows:

''SEC. 123. IMPROVEMENT PLANS.

''(a) STATE PROGRAM IMPROVEMENT PLAN.—

''(1) PLAN.—If a State fails to meet the State adjusted levels of performance described in the report submitted under section 113(c), the eligible agency shall develop and implement a program improvement plan in consultation with the appropriate agencies, individuals, and organizations for the first program year succeeding the program year in which the eligible agency failed to meet the State adjusted levels of performance, in order to avoid a sanction under paragraph (3).

''(2) TECHNICAL ASSISTANCE.—If the Secretary determines that an eligible agency is not properly implementing the eligible agency's responsibilities under section 122, or is not making substantial progress in meeting the purpose of this Act, based on the State's adjusted levels of performance, the Secretary shall work with the eligible agency to implement improvement activities consistent with the requirements of this Act.

''(3) FAILURE.—

''(A) IN GENERAL.—If an eligible agency fails to meet the State adjusted levels of performance, has not implemented an improvement plan as described in paragraph (1), has shown no improvement within 1 year after implementing an improvement plan as described in paragraph (1), or has failed to meet the State adjusted levels of performance for 2 or more consecutive years, the Secretary may, after notice and opportunity for a hearing, withhold from the eligible agency all, or a portion of, the eligible agency's allotment under this title.

''(B) WAIVER FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary may waive the sanction in subparagraph (A) due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in financial resources of the State.

''(4) FUNDS RESULTING FROM REDUCED ALLOTMENTS.—

''(A) IN GENERAL.—The Secretary shall use funds withheld under paragraph (3) for a State served by an eligible agency, to provide (through alternative arrangements) services and activities within the State to meet the purposes of this Act.

''(B) REDISTRIBUTION.—If the Secretary cannot satisfactorily use funds withheld under paragraph (3), then the amount of funds retained by the Secretary as a result of a reduction in an allotment made under paragraph (3) shall be redistributed to other eligible agencies in accordance with section 111.

''(b) LOCAL PROGRAM IMPROVEMENT.—

''(1) LOCAL EVALUATION.—Each eligible agency shall evaluate annually, using the local adjusted levels of performance described in section 113(b)(4), the career and technical education activities of each eligible recipient receiving funds under this title.

''(2) PLAN.—

''(A) IN GENERAL.—If, after reviewing the evaluation, the eligible agency determines that an eligible recipient is not making substantial progress in achieving the local adjusted levels of performance, the eligible agency shall—

''(i) conduct an assessment of the educational needs that the eligible recipient shall address to overcome local performance deficiencies, including the performance of special populations;

''(ii) enter into an improvement plan with an eligible recipient based on the results of the assessment, for the first program year succeeding the program year in which the eligible recipient failed to meet the local adjusted levels of performance, which plan shall demonstrate how the local performance deficiencies will be corrected and include instructional and other programmatic innovations of demonstrated effectiveness, and, where necessary, strategies for appropriate staffing and professional development; and

''(iii) conduct regular evaluations of the progress being made toward reaching the local adjusted levels of performance, as described in section 113(b)(4), and progress on implementing the improvement plan.

''(B) CONSULTATION.—The eligible agency shall conduct the activities described in subparagraph (A) in consultation with teachers, principals, administrators, faculty, parents, other school staff, appropriate agencies, and other appropriate individuals and organizations.

''(3) TECHNICAL ASSISTANCE.—If the eligible agency determines that an eligible recipient is not properly implementing the eligible recipient's responsibilities under section 134, or is not making substantial progress in meeting the purpose of this Act, based on the local adjusted levels of performance, the eligible agency shall provide technical assistance to the eligible recipient to assist the eligible recipient in carrying out the improvement activities consistent with the requirements of this Act. An eligible recipient, in collaboration with the eligible agency, may request that the Secretary provide additional technical assistance.

''(4) FAILURE.—

''(A) IN GENERAL.—If an eligible recipient fails to meet the local adjusted levels of performance as described in section 113(b)(4) and has not implemented an improvement plan as described in paragraph (2), has shown no improvement within 1 year after implementing an improvement plan as described in paragraph (2), or has failed to meet more

than 1 of the local adjusted levels of performance for 2 or more consecutive years, the eligible agency may, after notice and opportunity for a hearing, withhold from the eligible recipient all, or a portion of, the eligible recipient's allotment under this title.

''(B) WAIVER FOR EXCEPTIONAL CIRCUMSTANCES.—The eligible agency may waive the sanction under this paragraph due to exceptional or uncontrollable circumstances such as organizational structure, or a natural disaster or a precipitous and unforeseen decline in financial resources of the eligible recipient.

''(5) FUNDS RESULTING FROM REDUCED ALLOTMENTS.—The eligible agency shall use funds withheld under paragraph (4) to provide (through alternative arrangements) services and activities to students within the area served by such recipient to meet the purpose of this Act.''.

SEC. 113. STATE LEADERSHIP ACTIVITIES.

Section 124 (20 U.S.C. 2344) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) in subsection (a), by striking ''112(a)(2)'' and inserting ''112(a)(2)(A)'';

(3) in subsection (b)—

(A) in paragraph (1), by striking ''further learning'' and all that follows through the semicolon and inserting ''further education, further training, or for high skill, high wage, or high demand occupations;'';

(B) in paragraph (2), by striking subparagraphs (A) through (C) and inserting the following:

''(A) training of career and technical education teachers, faculty, principals, career guidance and academic counselors, and administrators to use technology, including distance learning;

''(B) encouraging schools to work with technology industries to offer voluntary internships and mentoring programs; or

''(C) encouraging lifelong learning, including through partnerships that may involve institutions of higher education, organizations providing career and technical education, businesses, and communications entities;'';

(C) by striking paragraph (3) and inserting the following:

''(3) professional development programs, including providing comprehensive professional development (including initial teacher preparation) for career and technical education teachers, faculty, principals, administrators, and career guidance and academic counselors at the secondary and postsecondary levels, that support activities described in section 122 and—

''(A) provide in-service and pre-service training in career and technical education programs and techniques, effective teaching skills based on promising practices and, where available and appropriate, scientifically based research, and effective practices to improve parental and community involvement;

''(B) improve student achievement in order to meet the State adjusted levels of performance established under section 113;

''(C) support education programs for teachers and faculty of career and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to career and technical education students to ensure that such personnel—

''(i) stay current with the needs, expectations, and methods of industry;

''(ii) can effectively develop challenging, integrated academic and career and technical education curriculum jointly with academic teachers, to the extent practicable; and

''(iii) develop a higher level of academic and industry knowledge and skills in career and technical education; and

''(D) are integrated with the teacher certification or licensing and professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 and title II of the Higher Education Act of 1965;'';

(D) in paragraph (4), by striking ''support for'' and inserting ''supporting'';

(E) in paragraph (5), by striking ''nontraditional training and employment'' and inserting ''nontraditional fields in emerging and established professions, and other activities that expose students, including special populations, to high skill, high wage occupations'';

(F) in paragraph (6)—

(i) by inserting ''intermediaries,'' after ''labor organizations,''; and

(ii) by inserting '', or complete career pathways, as described in section 122(c)(1)(A)'' after ''skills'';

(G) in paragraph (7), by striking ''and'' after the semicolon;

(H) in paragraph (8), by striking ''wage careers.'' and inserting ''wage, or high demand occupations; and''; and

(I) by adding at the end the following:

''(9) technical assistance for eligible recipients.'';

(4) by striking subsection (c) and inserting the following:

''(c) PERMISSIBLE USES OF FUNDS.—The leadership activities described in subsection (a) may include—

''(1) improvement of career guidance and academic counseling programs that assist students in making informed academic, and career and technical education, decisions, including encouraging secondary and postsecondary students to graduate with a diploma or degree, and expose students to high skill, high wage occupations and nontraditional fields in emerging and established professions;

''(2) establishment of agreements, including articulation agreements, between secondary and postsecondary career and technical education programs in order to provide postsecondary education and training opportunities for students participating in such career and technical education programs, such as tech-prep programs;

''(3) support for career and technical student organizations, especially with respect to efforts to increase the participation of students who are members of special populations;

''(4) support for public charter schools operating secondary career and technical education programs;

''(5) support for career and technical education programs that offer experience in, and understanding of, all aspects of an industry for which students are preparing to enter;

''(6) support for family and consumer sciences programs;

''(7) support for partnerships between education and business or business intermediaries, including cooperative education and adjunct faculty arrangements at the secondary and postsecondary levels;

''(8) support to improve or develop new career and technical education courses and initiatives, including career clusters, career academies, and distance learning, that prepare individuals academically and technically for high skill, high wage, or high demand occupations;

''(9) awarding incentive grants to eligible recipients for exemplary performance in carrying out programs under this Act, which awards shall be based on local performance indicators, as described in section 113, in accordance with previously publicly disclosed priorities;

''(10) providing career and technical education programs for adults and school dropouts to complete their secondary school education;

''(11) providing assistance to individuals, who have participated in services and activities under this title, in finding an appropriate job and continuing their education or training through collaboration with the workforce investment system established under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

''(12) developing valid and reliable assessments of technical skills that are integrated with industry certification assessments where available;

''(13) developing and enhancing data systems to collect and analyze data on secondary and postsecondary academic and employment outcomes;

''(14) improving—

''(A) the recruitment and retention of career and technical education teachers, faculty, principals, administrators, and career guidance and academic counselors, including individuals in groups underrepresented in the teaching profession; and

''(B) the transition to teaching from business and industry, including small business; and

''(15) adopting, calculating, or commissioning a self-sufficiency standard.''; and

(5) in subsection (d), by striking ''112(a)(2)'' and inserting ''112(a)(2)(A)''.

SEC. 114. DISTRIBUTION OF FUNDS TO SECONDARY SCHOOL PROGRAMS.

Section 131 (20 U.S.C. 2351) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career'';

(2) by striking subsection (a);

(3) by redesignating subsections (b) through (i) as subsections (a) through (h), respectively;

(4) in subsection (a) (as redesignated by paragraph (3) of this section)—

(A) in the subsection heading, by striking ''SPECIAL DISTRIBUTION RULES FOR SUCCEEDING FISCAL YEARS'' and inserting ''DISTRIBUTION RULES''; and

(B) by striking ''for fiscal year 2000 and succeeding fiscal years'';

(5) in subsection (b) (as redesignated by paragraph (3) of this section)—

(A) by striking ''subsection (b)'' and inserting ''subsection (a)''; and

(B) in paragraph (1), by striking ''9902(2))'' and inserting ''9902(2)))'';

(6) in subsection (e) (as redesignated by paragraph (3) of this section), in the subsection heading, by striking ''VOCATIONAL'' and inserting ''CAREER''; and

(7) in subsection (g) (as redesignated by paragraph (3) of this section), by striking ''subsections (a), (b), (c), and (d)'' and inserting ''subsections (a), (b), and (c)''.

SEC. 115. DISTRIBUTION OF FUNDS FOR POSTSECONDARY CAREER AND TECHNICAL EDUCATION PROGRAMS.

Section 132 (20 U.S.C. 2352) is amended by striking the section heading and inserting the following:

''SEC. 132. DISTRIBUTION OF FUNDS FOR POSTSECONDARY CAREER AND TECHNICAL EDUCATION PROGRAMS.''.

SEC. 116. SPECIAL RULES FOR CAREER AND TECHNICAL EDUCATION.

Section 133 (20 U.S.C. 2353) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 133. SPECIAL RULES FOR CAREER AND TECHNICAL EDUCATION.'';

and

(2) by striking ''vocational'' each place such term appears and inserting ''career''.

SEC. 117. LOCAL PLAN FOR CAREER AND TECHNICAL EDUCATION PROGRAMS.

Section 134 (20 U.S.C. 2354) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 134. LOCAL PLAN FOR CAREER AND TECHNICAL EDUCATION PROGRAMS.";

and

(2) in subsection (b), by striking paragraphs (1) through (10) and inserting the following:

''(1) describe how the career and technical education programs required under section 135(b) will be carried out with funds received under this title;

''(2) describe how the career and technical education activities will be carried out with respect to meeting State and local adjusted levels of performance established under section 113;

''(3) describe how the eligible recipient will—

''(A) offer the appropriate courses of not less than 1 of the career pathways described in section 122(c)(1)(A);

''(B) improve the academic and technical skills of students participating in career and technical education programs by strengthening the academic and career and technical education components of such programs through the integration of challenging academics with career and technical education programs through a coherent sequence of courses to ensure learning in the core academic subjects, and career and technical education subjects;

''(C) provide students with strong experience in and understanding of all aspects of an industry; and

''(D) ensure that students who participate in such career and technical education programs are taught to the same challenging academic proficiencies as are taught for all other students;

''(4) describe how comprehensive professional development will be provided that is consistent with section 122;

''(5) describe how parents, students, academic and career and technical education teachers, faculty, principals, administrators, career guidance and academic counselors, representatives of tech-prep consortia (if applicable), representatives of business (including small business) and industry, labor organizations, representatives of special populations, and other interested individuals are involved in the development, implementation, and evaluation of career and technical education programs assisted under this title, and how such individuals and entities are effectively informed about, and assisted in, understanding, the requirements of this title, including career pathways;

''(6) provide assurances that the eligible recipient will provide a career and technical education program that is of such size, scope, and quality to bring about improvement in the quality of career and technical education programs;

''(7) describe the process that will be used to evaluate and continuously improve the performance of the eligible recipient;

''(8) describe how the eligible recipient—

''(A) will review career and technical education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to or lowering success in the programs, for special populations; and

''(B) will provide programs that are designed to enable the special populations to meet the local adjusted levels of performance and prepare for high skill, high wage, or high demand occupations, including those that will lead to self-sufficiency;

''(9) describe how individuals who are members of special populations will not be discriminated against on the basis of their status as members of the special populations;

''(10) describe how funds will be used to promote preparation for nontraditional fields;

''(11) describe how career guidance and academic counseling will be provided to all career and technical education students; and

''(12) describe efforts to improve the recruitment and retention of career and technical education teachers, faculty, counselors, principals, and administrators, including individuals in groups underrepresented in the teaching profession, and the transition to teaching from business and industry.''.

SEC. 118. LOCAL USES OF FUNDS.

Section 135 (20 U.S.C. 2355) is amended—

(1) in subsection (a), by striking ''vocational'' and inserting ''career'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''vocational'' and inserting ''career''; and

(B) by striking paragraphs (1) through (8) and inserting the following:

''(1) strengthen the academic and career and technical education skills of students participating in career and technical education programs by strengthening the academic and career and technical education components of such programs through the integration of academics with career and technical education programs through a coherent sequence of courses, such as career pathways described in section 122(c)(1)(A), to ensure learning in the core academic subjects and career and technical education subjects;

''(2) link secondary career and technical education and postsecondary career and technical education, including by—

''(A) offering the relevant elements of not less than 1 career pathway described in section 122(c)(1)(A);

''(B) developing and supporting articulation agreements between secondary and postsecondary institutions; or

''(C) supporting tech-prep programs and consortia;

''(3) provide students with strong experience in and understanding of all aspects of an industry;

''(4) develop, improve, or expand the use of technology in career and technical education, which may include—

''(A) training of career and technical education teachers, faculty, principals, and administrators to use technology, including distance learning; or

''(B) encouraging schools to collaborate with technology industries to offer voluntary internships and mentoring programs;

''(5) provide professional development programs that are consistent with section 122 to secondary and postsecondary teachers, faculty, principals, administrators, and career guidance and academic counselors who are involved in integrated career and technical education programs, including—

''(A) in-service and pre-service training—

''(i) in career and technical education programs and techniques;

''(ii) in effective integration of challenging academic and career and technical education jointly with academic teachers, to the extent practicable;

''(iii) in effective teaching skills based on research that includes promising practices; and

''(iv) in effective practices to improve parental and community involvement;

''(B) support of education programs that provide information on all aspects of an industry;

''(C) internship programs that provide relevant business experience; and

''(D) programs dedicated to the effective use of instructional technology;

''(6) develop and implement evaluations of the career and technical education programs carried out with funds under this title, including an assessment of how the needs of special populations are being met;

''(7) initiate, improve, expand, and modernize quality career and technical education programs, including relevant technology;

''(8) provide services and activities that are of sufficient size, scope, and quality to be effective; and

''(9) provide activities to prepare special populations, including single parents and displaced homemakers, for high skill, high wage, or high demand occupations, including those that will lead to self-sufficiency.''; and

(3) in subsection (c)—

(A) in paragraph (1), by striking ''vocational'' and inserting ''career''; and

(B) by striking paragraphs (2) through (15) and inserting the following:

''(2) to provide career guidance and academic counseling that is based on current labor market indicators, as provided pursuant to section 118, for students participating in career and technical education programs that—

''(A) improves graduation rates and provides information on postsecondary and career options for secondary students, which activities may include the use of graduation and career plans; and

''(B) provides assistance for postsecondary students, including for adult students who are changing careers or updating skills;

''(3) for partnerships between the eligible recipient and businesses, including small businesses and business intermediaries, including for—

''(A) work-related experience for students, such as internships, cooperative education, school-based enterprises, entrepreneurship, and job shadowing that are related to career and technical education programs;

''(B) adjunct faculty arrangements at the secondary and postsecondary levels; and

''(C) industry experience for teachers and faculty;

''(4) to provide programs for special populations;

''(5) to assist career and technical student organizations;

''(6) for mentoring and support services;

''(7) for leasing, purchasing, upgrading, or adapting instructional equipment;

''(8) for teacher preparation programs that address the integration of academic and career and technical education and that assist individuals who are interested in becoming career and technical education teachers and faculty, including individuals with experience in business and industry;

''(9) to develop and expand postsecondary program offerings at times and in formats that are convenient and accessible for working students, including through the use of distance education;

''(10) for improving or developing new career and technical education courses, including development of new career pathways;

''(11) to develop and support small, personalized career-themed learning communities;

''(12) to provide support for family and consumer sciences programs;

''(13) to provide career and technical education programs for adults and school dropouts to complete their secondary school education or upgrade their technical skills;

''(14) to provide assistance to individuals who have participated in services and activities under this title in finding an appropriate job and continuing their education or training through collaboration with the workforce investment system established under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

''(15) to support activities in nontraditional fields, such as mentoring and outreach; and

''(16) to support other career and technical education activities that are consistent with the purpose of this Act.''.

SEC. 119. TECH-PREP EDUCATION.

(a) REDESIGNATION.—Title II (20 U.S.C. 2371 et seq.) is amended—

(1) by striking the title heading and inserting the following:

"PART D—TECH-PREP EDUCATION";

(2) by striking sections 201, 202, 206, and 207; and

(3) by redesignating sections 203, 204, 205, and 208, as sections 141, 142, 143, and 144, respectively.

(b) STATE ALLOTMENT AND APPLICATION.—Section 141 (as redesignated by subsection (a) of this section) is amended—

(1) in subsection (a), by striking ''section 206'' and inserting ''section 144''; and

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

''(c) STATE APPLICATION.—Each eligible agency desiring assistance under this part shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Such application shall describe how activities under this part will be coordinated, to the extent practicable, with activities described in section 122.''.

(c) TECH-PREP EDUCATION.—Section 142 (as redesignated by subsection (a) of this section) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''section 203'' and inserting ''section 141'';

(ii) by striking ''title'' and inserting ''part'';

(iii) by striking ''vocational'' both places the term appears and inserting ''career''; and

(iv) in subparagraph (A), by inserting '', educational service agency,'' after ''intermediate educational agency''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'';

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

(iii) by adding at the end the following:

''(C) employers, including small businesses, or business intermediaries; and

''(D) labor organizations.'';

(2) in subsection (c)—

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

''(2) consist of not less than 2 years of secondary school with a common core of technical skills and core academic subjects preceding graduation and 2 years or more of higher education, or an apprenticeship program of not less than 2 years following secondary instruction, designed to lead to technical skill proficiency, a credential, a certificate, or a degree, in a specific career field;'';

(B) in paragraph (3)(B), by inserting ''including through the use of articulation agreements, and'' after ''career fields,'';

(C) by striking paragraph (4) and inserting the following:

''(4) include in-service professional development for teachers, faculty, principals, and administrators that—

''(A) supports effective implementation of tech-prep programs;

''(B) supports joint training in the tech-prep consortium;

''(C) supports the needs, expectations, and methods of business and all aspects of an industry;

''(D) supports the use of contextual and applied curricula, instruction, and assessment;

''(E) supports the use and application of technology; and

''(F) assists in accessing and utilizing data, including labor market indicators, achievement, and assessments;'';

(D) in paragraph (5)—

(i) by striking ''training'' and inserting ''professional development'';

(ii) in subparagraph (B), by inserting '', which may include through the use of graduation and career plans'' after ''programs'';

(iii) in subparagraph (D), by striking ''and'';

(iv) in subparagraph (E), by inserting ''and'' after the semicolon; and

(v) by adding at the end the following:

''(F) provide comprehensive career guidance and academic counseling to participating students, including special populations;'';

(E) in paragraph (6)—

(i) by inserting ''(including pre-apprenticeship programs)'' after ''programs''; and

(ii) by striking ''and'' after the semicolon;

(F) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(G) by adding at the end the following:

''(8) coordinate with activities conducted under this title.''; and

(3) in subsection (d)—

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

(B) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(4) improve career guidance and academic counseling for participating students through the development and implementation of graduation and career plans; and

''(5) develop curriculum that supports effective transitions between secondary and postsecondary career and technical education programs.''.

(d) CONSORTIUM APPLICATIONS.—Section 143 (as redesignated by subsection (a) of this section) is amended—

(1) in subsection (a), by striking ''title'' and inserting ''part'';

(2) in subsection (b)—

(A) by striking ''5'' and inserting ''6''; and

(B) by striking ''title'' and inserting ''part'';

(3) in subsection (d)—

(A) in paragraph (1), by inserting ''or advanced'' after ''baccalaureate'';

(B) by striking paragraph (4) and inserting the following:

''(4) provide education and training in areas or skills, including emerging technology, in which there are significant workforce shortages based on the data provided by the entity in the State under section 118;'';

(C) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(6) demonstrate success in, or provide assurances of, coordination and integration with eligible recipients described in part C.''; and

(4) in subsection (e), by striking ''title'' and inserting ''part''.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 144 (as redesignated by subsection (a) of this section) is amended—

(1) by striking ''title (other than section 207)'' and inserting ''part''; and

(2) by striking ''1999 and each of the 4'' and inserting ''2006 and each of the 5''.

TITLE II—GENERAL PROVISIONS

SEC. 201. REDESIGNATION OF TITLE.

(a) FEDERAL ADMINISTRATIVE PROVISIONS.—Title III (20 U.S.C. 2391 et seq.) is amended by redesignating sections 311 through 318 as sections 211 through 218, respectively.

(b) STATE ADMINISTRATIVE PROVISIONS.—Title III (20 U.S.C. 2391 et seq.) is amended by redesignating sections 321 through 325 as sections 221 through 225, respectively.

(c) TITLE HEADING.—The title heading of title III (20 U.S.C. 2391 et seq.) is amended to read as follows:

"TITLE II—GENERAL PROVISIONS".

SEC. 202. FISCAL REQUIREMENTS.

Section 211 (as redesignated by section 201 of this Act) is amended—

(1) by striking ''vocational'' each place the term appears and inserting ''career''; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

''(1) DETERMINATION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no payments shall be made under this Act for any fiscal year to a State for career and technical education programs or tech-prep programs unless the Secretary determines that the average fiscal effort per student or the aggregate expenditures of such State for career and technical education programs for the 3 fiscal years preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for career and technical education programs, for the 3 fiscal years preceding the fiscal year for which the determination is made.

''(B) COMPUTATION.—In computing the average fiscal effort or aggregate expenditures pursuant to subparagraph (A), the Secretary shall exclude capital expenditures, special one-time project costs, and the cost of pilot programs.

''(C) DECREASE IN FEDERAL SUPPORT.—If the amount made available for career and technical education programs under this Act for a fiscal year is less than the amount made available for career and technical education programs under this Act for the preceding fiscal year, then the average fiscal effort per student or the aggregate expenditures of a State required by subparagraph (A) for the 3 preceding fiscal years shall be decreased by the same percentage as the percentage decrease in the amount so made available.''; and

(B) in paragraph (2), by striking ''fiscal effort'' both places the term appears and inserting ''average fiscal effort''.

SEC. 203. VOLUNTARY SELECTION AND PARTICIPATION.

Section 214 (as redesignated by section 201 of this Act) is amended by striking ''vocational'' both places the term appears and inserting ''career''.

SEC. 204. LIMITATION FOR CERTAIN STUDENTS.

Section 215 (as redesignated by section 201 of this Act) is amended by striking ''vocational'' and inserting ''career''.

SEC. 205. AUTHORIZATION OF SECRETARY; PARTICIPATION OF PRIVATE SCHOOL PERSONNEL.

Part A of title II (as redesignated by section 201 of this Act) is amended—

(1) by striking section 217;

(2) by redesignating section 218 as section 217; and

(3) in section 217 (as redesignated by paragraph (2) of this section)—

(A) by inserting ''principals,'' after ''for vocational and technical education teachers,'';

(B) by inserting ''principals,'' after ''of vocational and technical education teachers,''; and

(C) by striking ''vocational'' each place the term appears and inserting ''career''.

SEC. 206. STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS.

Section 225(c) (as redesignated by section 201 of this Act) is amended—

(1) in the subsection heading, by striking ''VOCATIONAL'' and inserting ''CAREER''; and

(2) by striking ''vocational'' both places the term appears and inserting ''career''.

SEC. 207. TABLE OF CONTENTS.

Section 1(b) (20 U.S.C. 2301 note) is amended to read as follows:

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

By Mr. REID (for himself and Mr. ENSIGN):

S. 252. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to introduce the Dandini Research Park Transfer Act on behalf of myself and Senator ENSIGN. This bill will transfer an important tract of land in Washoe County, NV, to the University and Community College System of Nevada.

The University of Nevada holds two patents from the Bureau of Land Management for approximately 467 acres of public land located north of downtown Reno. In the early 1970s, the land was patented to the university pursuant to the Recreation and Public Purposes Act. Now known as the Dandini Research Park, it is the home of Truckee Meadows Community College and the Desert Research Institute's Northern Nevada Science Center.

Truckee Meadows Community College and its predecessor, Western Nevada Community College, have provided educational programs and opportunities to the residents of Reno, Sparks, and the surrounding communities for over 30 years. Construction of the College's facilities on the Dandini campus began in 1975, shortly after conveyance of the original patents.

For over 25 years the Desert Research Institute has excelled in applied scientific research and the application of technologies to improve people's lives in Nevada and throughout the world. Its three core divisions of Atmospheric, Hydrologic, and Earth and Ecosystem Sciences cooperate with two interdisciplinary centers to provide innovative solutions to pressing environmental problems. The Center for Arid Lands Environmental Management and the Center for Watersheds and Environmental Sustainability apply scientific understanding to the effective management of natural resources while addressing our needs for economic diversification and science-based educational opportunities. In doing so, DRI undertakes fundamental scientific research in Nevada and around the globe. For example, as a key participant in the U.S. Geological Survey Water Research Program, DRI plays a critical role in identifying and helping protect the region's scarce water resources.

DRI shares its facility with the Western Regional Climate Center, one of six regional climate centers operating under the National Oceanic and Atmospheric Administration's climate program. The Western Regional Climate Center conducts applied research and provides high quality climate data and information pertaining to the western United States.

The Desert Research Institute wishes to expand its Northern Nevada Science Center. DRI is considering an innovative means of financing the expansion, which would involve a private developer who would build and finance the expansion and lease it back to DRI. The private developers with whom DRI has discussed the proposal, as well as the Institute's counsel, however, have pointed out that the terms of the patents and the restrictions imposed by the Recreation and Public Purposes Act represent obstacles to such an arrangement.

Truckee Meadows Community College and the Northern Nevada Science Center are exceptional assets of the scientific and educational community in the Truckee Meadows. The Center serves not only the citizens of Washoe County, but the needs of all Nevadans and the western United States as well. It deserves the opportunity to grow and prosper with the community—one of the fastest-growing communities in the Nation.

The bill Senator ENSIGN and I present to you today simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to the University and Community College System of Nevada. Because of the overwhelming public benefit provided by the Center, we ask that the land be conveyed for free, but that the University cover the costs of the transaction.

During the 108th Congress this legislation received strong support from my colleagues and was passed by both the Energy and Natural Resources Committee and the Senate as a whole. I look forward to working with my fellow senators during this session to usher this important legislation towards final passage.

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

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

S. 252

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 ''Dandini Research Park Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BOARD OF REGENTS.—The term ''Board of Regents'' means the Board of Regents of the University and Community College System of Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. CONVEYANCE TO THE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA.

(a) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall convey to the Board of Regents, without consideration, all right, title, and interest of the United States in and to the approximately 467 acres of land located in Washoe County, Nevada, patented to the University of Nevada under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), and described in paragraph (2).

(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) is—

(A) the parcel of land consisting of approximately 309.11 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 1, 2, 3, 4, 5, and 11, SE¼NW¼, NE¼SW¼, Mount Diablo Meridian, Nevada; and

(B) the parcel of land consisting of approximately 158.22 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 6 and 7, SW¼NE¼, NW¼SE¼, Mount Diablo Meridian, Nevada.

(b) COSTS.—The Board of Regents shall pay to the United States an amount equal to the

costs of the Secretary associated with the conveyance under subsection (a)(1).

(c) CONDITIONS.—If the Board of Regents sells any portion of the land conveyed to the Board of Regents under subsection (a)(1)—

(1) the amount of consideration for the sale shall reflect fair market value, as determined by an appraisal; and

(2) the Board of Regents shall pay to the Secretary an amount equal to the net proceeds of the sale, for use by the Director of the Bureau of Land Management in the State of Nevada, without further appropriation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 253. A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to introduce the Pahrump American Legion Post Land Conveyance Act for myself and Senator ENSIGN. This Act will transfer approximately 5 acres of BLM land in Pahrump, NV, to the American Legion for the purpose of constructing a post home and other facilities that will benefit veterans' groups and the local community.

The American Legion and other nonprofit organizations that represent our Nation's veterans in the vicinity of Pahrump have tripled in size over the last 10 years. The local memberships of the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans will soon exceed 1,000 members, and these groups will continue to expand as Pahrump draws more and more new residents.

The existing facility used by the veterans in Pahrump was built by the Veterans of Foreign Wars in the 1960s. It is much too small and not at all adequate for the veterans' current needs. The nearest facility that can accommodate them is located in Las Vegas more than 60 miles away.

The Pahrump American Legion would like to build a post building, veterans' garden, and memorial park. These new facilities would benefit not only the local veterans, but would be made available—at no cost—for community activities. The American Legion has tried for over six years to acquire a suitable tract of land to provide a home for a new veterans center. The Legion started a pledge campaign and raised over $16,000 for the building fund before the parcel of land they sought to acquire was removed from consideration by the BLM. Unfortunately, other tracts of land that might represent alternative sites in Pahrump are not suitable.

This situation is truly regrettable. Without a home, the Pahrump American Legion Post can't offer the kind of services and programs that the veterans in the area deserve. Our veterans aren't the only ones who are suffering, either. All across the United States, the American Legion is deservedly famous for supporting community activities like the Boy Scouts and Girl Scouts, as well as the National Oratorical Contest, American Legion Baseball, Girls and Boys State, and other activities for young people. All of these worthy groups and projects would benefit from the construction of a new post home, and from the conveyance of this small parcel of federal land. In sum, this bill is good for veterans, good for kids, and good for hard-working Nevada families.

Our bill simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to American Legion ''Edward H McDaniel'' Post No. 22 in Pahrump. Because of the great public benefit such a facility will provide, we ask that the land be conveyed for free, but that the American Legion cover the costs of the transaction.

I was pleased that my distinguished colleagues recognized the value of this legislation during the 108th Congress and supported its passage by the Energy and Natural Resources Committee and by the Senate as a whole. I look forward to working with my friends to move this bill in a timely manner during the current session.

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

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

S. 253

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 ''Edward H. McDaniel American Legion Post No. 22 Land Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) POST NO. 22.—The term ''Post No. 22'' means the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. CONVEYANCE OF LAND TO EDWARD H. MCDANIEL AMERICAN LEGION POST NO. 22.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 180 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c) and in accordance with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), the Secretary shall convey to Post No. 22, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (b) is the parcel of Bureau of Land Management land that—

(1) is bounded by Route 160, Bride Street, and Dandelion Road in Nye County, Nevada;

(2) consists of approximately 4.5 acres of land; and

(3) is more particularly described as a portion of the S ¼ of section 29, T. 20 S., R. 54 E., Mount Diablo and Base Meridian.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—Post No. 22 and any successors of Post No. 22 shall use the parcel of land described in section (b) for the construction and operation of a post building and memorial park for use by Post No. 22, other veterans groups, and the local community for events and activities.

(2) REVERSION.—Except as provided in paragraph (3), if the Secretary, after notice to Post No. 22 and an opportunity for a hearing, makes a finding that Post No. 22 has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1) and Post No. 22 fails to discontinue that use, title to the parcel shall revert to the United States, to be administered by the Secretary.

(3) WAIVER.—The Secretary may waive the requirements of paragraph (2) if the Secretary determines that a waiver would be in the best interests of the United States.

By Mr. REID (for himself and Mr. ENSIGN):

S. 254. A bill to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries; to the Committee on Energy' and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce this bill, which will address a long standing public land issue in central Nevada. As you may know, the Federal Government controls over 87 percent of the lands in the State of Nevada. This means that Nevadans must frequently seek the assistance of Congress to deal with land issues that would otherwise be relatively uncomplicated. Today we offer a bill to address a simple land ownership issue in Lander and Eureka Counties.

This bill would convey two small cemeteries in central Nevada from federal control back to the local communities to which they should belong. The cemeteries in question the Kingston Cemetery in Lander County and the Maiden's Grave Cemetery in Eureka County—were first established by pioneers and immigrants who settled the isolated high desert valleys of the Great Basin in the mid-1800s. These same pioneers created the Kingston and Maiden's Grave cemeteries to serve as sacred resting places for friends and family. Unfortunately, years after their founding, the private nature of these lands was overlooked and the cemeteries were placed in the hands of federal land management agencies. Today much of the original Kingston Cemetery is on land managed by the U.S. Forest Service and the Maiden's Grave Cemetery in Beowawe sits on land managed by the Bureau of Land Management.

Under current law, these agencies must sell the cemeteries back to the communities at fair market value. However, these historic cemeteries were established prior to the designation of the Federal agencies that now manage them. For years, Lander County has been required to lease much of the Kingston Cemetery from the Forest

Service. The Forest Service previously sold approximately 1 acre to the Town of Kingston, but this land transfer did not allow for the protection of uncharted graves or for the implementation of the communty' s original site plan.

Because the people of Beowawe and Kingston should not have to buy or lease cemeteries that are rightfully theirs, our bill provides for the simple conveyance of the Maiden's Grave Cemetery to Eureka County and the balance of the original location of the Kingston Cemetery to Lander County, NV. The conveyances provided by this bill will benefit our federal land managers as well as our rural communities. The disposal of these small parcels of land for no consideration will benefit the United States because they represent isolated tracts that prove difficult to manage for public use.

In the 108th Congress I was pleased that this bill received approval from the Energy and Natural Resources Committee and from the Senate as a whole. I look forward to working with my colleagues to complete this small conveyance during the current Congress. It is time that we restore ownership of these two small rural cemeteries to the communities to which they rightfully belong.

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

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

S. 254

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 ''Central Nevada Rural Cemeteries Act''.

SEC. 2. CONVEYANCE TO LANDER COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the historical use by settlers and travelers since the late 1800's of the cemetery known as ''Kingston Cemetery'' in Kingston, Nevada, predates incorporation of the land within the jurisdiction of the Forest Service on which the cemetery is situated;

(2) it is appropriate that that use be continued through local public ownership of the parcel rather than through the permitting process of the Federal agency;

(3) in accordance with Public Law 85–569 (commonly known as the ''Townsite Act'') (16 U.S.C. 478a), the Forest Service has conveyed to the Town of Kingston 1.25 acres of the land on which historic gravesites have been identified; and

(4) to ensure that all areas that may have unmarked gravesites are included, and to ensure the availability of adequate gravesite space in future years, an additional parcel consisting of approximately 8.75 acres should be conveyed to the county so as to include the total amount of the acreage included in the original permit issued by the Forest Service for the cemetery.

(b) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights and the condition stated in subsection (e), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the ''Secretary''), not later than 90 days after the date of enactment of this Act, shall convey to Lander County, Nevada (referred to in this section as the ''county''), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (c).

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (b) is the parcel of National Forest System land (including any improvements on the land) known as ''Kingston Cemetery'', consisting of approximately 10 acres and more particularly described as SW¼SE¼SE¼ of section 36, T. 16N., R. 43E., Mount Diablo Meridian.

(d) EASEMENT.—At the time of the conveyance under subsection (b), subject to subsection (e)(2), the Secretary shall grant the county an easement allowing access for persons desiring to visit the cemetery and other cemetery purposes over Forest Development Road #20307B, notwithstanding any future closing of the road for other use.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The county (including its successors) shall continue the use of the parcel conveyed under subsection (b) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the county and an opportunity for a hearing, makes a finding that the county has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the county fails to discontinue that use—

(A) title to the parcel shall revert to the Secretary, to be administered by the Secretary; and

(B) the easement granted to the county under subsection (d) shall be revoked.

(3) WAIVER.—The Secretary may waive the application of subparagraph (A) or (B) of paragraph (2) if the Secretary determines that a waiver would be in the best interests of the United States.

SEC. 3. CONVEYANCE TO EUREKA COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the historical use by settlers and travelers since the late 1800's of the cemetery known as ''Maiden's Grave Cemetery'' in Beowawe, Nevada, predates incorporation of the land within the jurisdiction of the Bureau of Land Management on which the cemetery is situated; and

(2) it is appropriate that that use be continued through local public ownership of the parcel rather than through the permitting process of the Federal agency.

(b) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights and the condition stated in subsection (e), the Secretary of the Interior, acting through the Director of the Bureau of Land Management (referred to in this section as the ''Secretary''), not later than 90 days after the date of enactment of this Act, shall convey to Eureka County, Nevada (referred to in this section as the ''county''), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (c).

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (b) is the parcel of public land (including any improvements on the land) known as ''Maiden's Grave Cemetery'', consisting of approximately 10 acres and more particularly described as S½NE¼SW¼SW¼, N½SE¼SW¼SW¼ of section 10, T.31N., R.49E., Mount Diablo Meridian.

(d) EASEMENT.—At the time of the conveyance under subsection (b), subject to subsection (e)(2), the Secretary shall grant the county an easement allowing access for persons desiring to visit the cemetery and other cemetery purposes over an appropriate access route consistent with current access.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The county (including its successors) shall continue the use of the parcel conveyed under subsection (b) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the county and an opportunity for a hearing, makes a finding that the county has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the county fails to discontinue that use—

(A) title to the parcel shall revert to the Secretary, to be administered by the Secretary; and

(B) the easement granted to the county under subsection (d) shall be revoked.

(3) WAIVER.—The Secretary may waive the application of subparagraph (A) or (B) of paragraph (2) if the Secretary determines that a waiver would be in the best interests of the United States.

By Mr. GRASSLEY (for himself, Mr. HATCH, Mr. SESSIONS, Mr. THUNE, Mr. CARPER, Mr. NELSON of Nebraska, Mr. SHELBY, and Mr. ENZI):

S. 256. A bill to amend title 11 of the United States Code, and for other purposes; to the Committee on the Judiciary.

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

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

S. 256

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005''.

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

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)'';

(B) in paragraph (1), as so redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not at the request or suggestion of'' and inserting ''trustee (or bankruptcy administrator, if any), or'';

(II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,'' after ''consumer debts''; and

(III) by striking ''a substantial abuse'' and inserting ''an abuse''; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

''(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

''(II) $10,000.

''(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

''(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

''(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

''(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

''(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

''(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

''(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

''(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

''(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

''(I) documentation for such expense or adjustment to income; and

''(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

''(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

''(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

''(II) $10,000.

''(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

''(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider—

''(A) whether the debtor filed the petition in bad faith; or

''(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

''(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee files a motion for dismissal or conversion under this subsection; and

''(ii) the court—

''(I) grants such motion; and

''(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

''(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

''(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

''(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

''(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

''(ii) determined that the petition, pleading, or written motion—

''(I) is well grounded in fact; and

''(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

''(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

''(II) is engaged in commercial or business activity; and

''(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(I) a parent corporation; and

''(II) any other subsidiary corporation of the parent corporation.

''(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

''(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

''(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

''(ii) the debtor files a statement under penalty of perjury—

''(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

''(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

''(10A) 'current monthly income'—

''(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

''(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

''(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

''(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism;''.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The trustee shall—''; and

(2) by adding at the end the following:

''(b)(1) With respect to a debtor who is an individual in a case under this chapter—

''(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

''(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

''(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

''(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a

family of the same number or fewer individuals.''.

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

''(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has arisen.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee (or bankruptcy administrator, if any), or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given such term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given such term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (6) the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

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

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.''.

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking ''or'' at the end;

(2) in paragraph (3) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

''(A) such expenses are reasonable and necessary;

''(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

''(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

''(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.''.

(j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended by striking ''and 523(a)(2)(C)'' each place it appears and inserting ''523(a)(2)(C), 707(b), and 1325(b)(3)''.

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

''(39A) 'median family income' means for any year—

''(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

''(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year;''.

(k) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 11 or 13.''.

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

''(1) a brief description of—

''(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

''(B) the types of services available from credit counseling agencies; and

''(2) statements specifying that—

''(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and

''(B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.''.

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of the enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

''(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

''(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

''(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

''(iii) is satisfactory to the court.

''(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.''.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

''(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

''(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court—

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

''(a) The clerk shall maintain a publicly available list of—

''(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

''(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

''(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

''(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

''(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

''(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

''(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

''(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum—

''(A) have a board of directors the majority of which—

''(i) are not employed by such agency; and

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

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

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

''(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and

any costs of such program that will be paid by such client and how such costs will be paid;

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

''(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

''(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

''(A) trained personnel with adequate experience and training in providing effective instruction and services;

''(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

''(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective; and

''(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

''(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management.

''(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

''(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Nonprofit budget and credit counseling agencies; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

''(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

''(B) the offer of the debtor under subparagraph (A)—

''(i) was made at least 60 days before the date of the filing of the petition; and

''(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

''(C) no part of the debt under the alternative repayment schedule is nondischargeable.

''(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

''(A) the creditor unreasonably refused to consider the debtor's proposal; and

''(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).''.

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.''.

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

''(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

''(2) such act is in the ordinary course of business between the creditor and the debtor; and

''(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.''.

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION AGREEMENT PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended—

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

''(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;''; and

(2) by adding at the end the following:

''(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

''(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

''(3) The disclosure statement required under this paragraph shall consist of the following:

''(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

''(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

''(C) The 'Amount Reaffirmed', using that term, which shall be—

''(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

''(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

''(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

''(i) 'The amount of debt you have agreed to reaffirm'; and

''(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

''(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

''(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II); or

''(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

''(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

''(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

''(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

''(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

''(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

''(I) The following statement: 'Note: When this disclosure refers to what a creditor ''may'' do, it does not use the word ''may'' to give the creditor specific permission. The word ''may'' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.'.

''(J)(i) The following additional statements:

'' 'Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

'' '1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

'' '2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

'' '3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

'' '4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

'' '5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

'' '6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

'' '7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

'' 'Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

'' 'What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

'' 'Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

'' 'What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

'' '6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

''(4) The form of such agreement required under this paragraph shall consist of the following:

'' 'Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

''`Brief description of credit agreement:

''`Description of any changes to the credit agreement made as part of this reaffirmation agreement:

''`Signature: Date:

''`Borrower:

''`Co-borrower, if also reaffirming these debts:

''`Accepted by creditor:

''`Date of creditor acceptance:'.

''(5) The declaration shall consist of the following:

''(A) The following certification:

''`Part C: Certification by Debtor's Attorney (If Any).

''`I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

''`Signature of Debtor's Attorney: Date:'.

''(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

''(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

''(6)(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''`Part D: Debtor's Statement in Support of Reaffirmation Agreement.

''`1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

''`2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''`I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

''`Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

''`I am not represented by an attorney in connection with this reaffirmation agreement.

''`I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

''`Therefore, I ask the court for an order approving this reaffirmation agreement.'.

''(8) The court order, which may be used to approve such agreement, shall consist of the following:

''`Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

''(l) Notwithstanding any other provision of this title the following shall apply:

''(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

''(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.''.

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

''(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

''(b) UNITED STATES ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

''(1) the United States attorney for each judicial district of the United States; and

''(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

''(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

''(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.''.

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following:

''(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.''.

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION AGREEMENT PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation agreement process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation agreements; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation agreement process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before, on, or after the

date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt;''.

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as so redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as so redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as so redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as so redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as so redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

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

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

''(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.''.

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.'';

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

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

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) in paragraph (10), by striking ''and'' at the end;

(B) by redesignating paragraph (11) as paragraph (12); and

(C) by inserting after paragraph (10) the following:

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(5) in section 1225(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.'';

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(7) in section 1307(c)—

(A) in paragraph (9), by striking ''or'' at the end;

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

(C) by adding at the end the following:

''(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.'';

(8) in section 1322(a)—

(A) in paragraph (2), by striking ''and'' at the end;

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

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(9) in section 1322(b)—

(A) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:

''(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and'';

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) under subsection (a)—

''(A) of the commencement or continuation of a civil action or proceeding—

''(i) for the establishment of paternity;

''(ii) for the establishment or modification of an order for domestic support obligations;

''(iii) concerning child custody or visitation;

''(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

''(v) regarding domestic violence;

''(B) of the collection of a domestic support obligation from property that is not property of the estate;

''(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

''(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

''(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

''(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

''(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;''.

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

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

''(5) for a domestic support obligation;''; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''; and

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(B) by inserting ''or'' after ''court of record,''; and

(C) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));'';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''; and

(3) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

''(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;''.

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date of the filing of the petition'' after ''dependent of the debtor''.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

''(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.''.

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.''.

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.''.

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2) or (4) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.''.

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

''(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

''(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

''(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

''(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;''.

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or an employee of an attorney'' and inserting ''for the debtor or an employee of such attorney under the direct supervision of such attorney'';

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: ''If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—

''(A) sign the document for filing; and

''(B) print on the document the name and address of that officer, principal, responsible person, or partner.''; and

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

''(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

''(B) The notice under subparagraph (A)—

''(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

''(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

''(iii) shall—

''(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

''(II) be filed with any document for filing.'';

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''(2) For purposes'' and inserting ''(2)(A) Subject to subparagraph (B), for purposes''; and

(ii) by adding at the end the following:

''(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.''; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking ''(d)(1)'' and inserting ''(d)''; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

''(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

''(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

''(i) whether—

''(I) to file a petition under this title; or

''(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

''(ii) whether the debtor's debts will be discharged in a case under this title;

''(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

''(iv) concerning—

''(I) the tax consequences of a case brought under this title; or

''(II) the dischargeability of tax claims;

''(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

''(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

''(vii) concerning bankruptcy procedures and rights.'';

(6) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

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

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

''(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.'';

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

(i) by striking ''Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(iii) by adding at the end the following: ''If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).'';

(D) by striking paragraph (3), as so redesignated, and inserting the following:

''(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

''(i) rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or

''(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

''(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in

which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

''(C) An individual may exempt any funds recovered under this paragraph under section 522(b).''; and

(E) in paragraph (4), as so redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court,'';

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

''(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—'';

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking ''a violation of which subjects a person to criminal penalty'';

(ii) in subparagraph (B)—

(I) by striking ''or has not paid a penalty'' and inserting ''has not paid a penalty''; and

(II) by inserting ''or failed to disgorge all fees ordered by the court'' after ''a penalty imposed under this section,'';

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee (or the bankruptcy administrator, if any).''; and

(11) by adding at the end the following:

''(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

''(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

''(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

''(B) advised the debtor to use a false Social Security account number;

''(C) failed to inform the debtor that the debtor was filing for relief under this title; or

''(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

''(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of this section.

''(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.''.

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.'';

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(F) by striking ''Such property is—''; and

(G) by adding at the end the following:

''(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

''(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

''(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by inserting after paragraph (17) the following:

''(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of

the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.''.

(e) ASSET LIMITATION.—

(1) LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.''.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting ''522(n),'' after ''522(d),''.

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (9); and

(C) by inserting after paragraph (4) the following:

''(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

''(i) are not pledged or promised to any entity in connection with any extension of credit; and

''(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

''(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

''(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

''(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;''; and

(2) by adding at the end the following:

''(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

''(3) 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;''; and

(3) by inserting after paragraph (12) the following:

''(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(A) the services that such agency will provide to such person; or

''(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the

chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

''§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1); and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

'' 'IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

'' 'If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

'' 'The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

'' 'Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

'' 'If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

'' 'If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

'' 'If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

'' 'Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

''(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

''(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.

''(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

''527. Disclosures.''.

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 227 and 228, is amended by adding at the end the following:

''§ 528. Requirements for debt relief agencies

''(a) A debt relief agency shall—

''(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

''(A) the services such agency will provide to such assisted person; and

''(B) the fees or charges for such services, and the terms of payment;

''(2) provide the assisted person with a copy of the fully executed and completed contract;

''(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

''(4) clearly and conspicuously use the following statement in such advertisement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

''(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

''(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

''(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements

that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

''(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

''(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

''(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527, the following:

''528. Requirements for debt relief agencies.''.

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by debtors who are individuals under such title, the names and social security account numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:

'', except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

''(A) such sale or such lease is consistent with such policy; or

''(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

''(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

''(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

''(41A) 'personally identifiable information' means—

''(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

''(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

''(ii) the geographical address of a physical place of residence of such individual;

''(iii) an electronic address (including an e-mail address) of such individual;

''(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

''(v) a social security account number issued to such individual; or

''(vi) the account number of a credit card issued to such individual; or

''(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

''(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

''(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically;''.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

''§ 332. Consumer privacy ombudsman

''(a) If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

''(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B). Such information may include presentation of—

''(1) the debtor's privacy policy;

''(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

''(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

''(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

''(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.''.

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting ''a consumer privacy ombudsman appointed under section 332,'' before ''an examiner''.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''332. Consumer privacy ombudsman.''.

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11 of the United States Code, as amended by section 106, is amended by inserting after section 111 the following:

''§ 112. Prohibition on disclosure of name of minor children

''The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

''112. Prohibition on disclosure of name of minor children.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting ''and subject to section 112'' after ''section''.

TITLE III —DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. TECHNICAL AMENDMENTS.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'';

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915''; and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

''(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

''(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

''(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors, if—

''(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

''(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

''(aa) file or amend the petition or other documents as required by this title or the

court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

''(bb) provide adequate protection as ordered by the court; or

''(cc) perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

''(aa) if a case under chapter 7, with a discharge; or

''(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

''(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

''(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

''(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

''(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

''(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors if—

''(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.''.

SEC. 303. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (19), the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

''(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

''(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;''.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(A) in paragraph (4), by striking '', and'' at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

''(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.''; and

(2) in section 722, by inserting ''in full at the time of redemption'' before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking ''(e), and (f)'' and inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k) and transferring such subsection so as to insert it after subsection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

''(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

''(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.''; and

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking ''consumer'';

(B) in subsection (a)(2)(B)—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a)''; and

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C) by inserting '', except as provided in section 362(h)'' before the semicolon; and

(D) by adding at the end the following:

''(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that—

''(I) the holder of such claim retain the lien securing such claim until the earlier of—

''(aa) the payment of the underlying debt determined under nonbankruptcy law; or

''(bb) discharge under section 1328; and

''(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.''.

(c) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence'—

''(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

''(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;''; and

(2) by inserting after paragraph (27), the following:

''(27A) 'incidental property' means, with respect to a debtor's principal residence—

''(A) property commonly conveyed with a principal residence in the area where the real property is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

''(C) all replacements or additions;''.

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

(A) by striking ''180 days'' and inserting ''730 days''; and

(B) by striking '', or for a longer portion of such 180-day period than in any other place'' and inserting ''or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place''; and

(2) by adding at the end the following:

''If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).''.

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 of title 11, United States Code, as amended by section 224, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsections (o) and (p),'' before ''any property''; and

(2) by adding at the end the following:

''(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

''(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(3) a burial plot for the debtor or a dependent of the debtor; or

''(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.''.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

''(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, as amended by section 306, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(iii) if—

''(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

''(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion

of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

''(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C)(i) for purposes of subparagraph (A)—

''(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

''(ii) for purposes of this subparagraph—

''(I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

''(II) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''.

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

''(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

''(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

''(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

''(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

''(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

''(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

''(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

''(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

''(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

''(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

''(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

''(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

''(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

''(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

''(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

''(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

''(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

''(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

''(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

''(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

''(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

''(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

''(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

''(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

''(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

''(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.''.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

''(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

''(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

''(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

''(xv) 1 personal computer and related equipment.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor, or any relative of the debtor);

''(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

''(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

''(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.''.

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by subsection (a), with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact such section 522(f)(4) has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such section 522(f)(4) consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);''.

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

(B) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(C) by adding at the end the following:

''(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

''(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.''; and

(2) by adding at the end the following:

''(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

''(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

''(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

''(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

''(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;''; and

(2) by adding at the end the following:

''(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

''(2)(A) The debtor shall provide—

''(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

''(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

''(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the

court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

''(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

''(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan—

''(A) at a reasonable cost; and

''(B) not later than 5 days after such request is filed.

''(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

''(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

''(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

''(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

''(4) in a case under chapter 13—

''(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

''(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of the income of the debtor;

''(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

''(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

''(h) If requested by the United States trustee or by the trustee, the debtor shall provide—

''(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

''(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c)(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

(3) Not later than 540 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

(A) assesses the effectiveness of the procedures established under paragraph (1); and

(B) if appropriate, includes proposed legislation to—

(i) further protect the confidentiality of tax information; and

(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

''(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

''(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

''(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.''.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.''.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by section 102, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

''(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.''; and

(4) in section 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) such 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''§ 1115. Property of the estate

''(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:

''(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section''.

(d) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor who is an individual''; and

(2) by adding at the end the following:

''(5) In a case in which the debtor is an individual—

''(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

''(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

''(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

''(ii) modification of the plan under section 1127 is not practicable; and''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.''.

SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, is amended by adding at the end the following:

''(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

''(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

''(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

''(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

''(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

''(B) the debtor owes a debt arising from—

''(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

''(iii) any civil remedy under section 1964 of title 18; or

''(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

''(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting ''522(p), 522(q),'' after ''522(n),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended

by adding after paragraph (6), as added by section 225(a)(1)(C), the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by an employer from employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title;''.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

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

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) For a case commenced—

''(A) under chapter 7 of title 11, $160; or

''(B) under chapter 13 of title 11, $150.''.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''three-fourths''; and

(3) in paragraph (4), by striking ''one-half'' and inserting ''100 percent''.

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''pursuant to 28 U.S.C. section 1930(b)'' and all that follows through ''28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: ''other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;''; and

(B) in paragraph (2)(D), by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''or'' at the end;

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

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting ''or of a kind that section 365(b)(2) expressly does not require to be cured'' before the semicolon at the end;

(2) in subparagraph (C), by striking ''and'' at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

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

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate including—

''(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

''(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;''.

SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking ''or'' at the end;

(2) in paragraph (11) by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (11) the following:

''(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

''(A) section 522(q)(1) may be applicable to the debtor; and

''(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(b) CHAPTER 11.—Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge,

the court finds that there is no reasonable cause to believe that—

''(i) section 522(q)(1) may be applicable to the debtor; and

''(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

''(25) under subsection (a), of—

''(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

''(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

''(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;''.

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking ''10'' each place it appears and inserting ''30''.

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

''(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.''.

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking ''subsection'' the first place it appears and inserting ''subsections (b) and''.

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

''(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (h);

(2) in subsection (h), as so redesignated, by inserting ''and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods'' after ''consent of a creditor''; and

(3) by adding at the end the following:

''(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

''(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section 7–209.''.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

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

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.''.

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

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

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.''.

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a debt (excluding a consumer debt) against a noninsider of less than $10,000,'' after ''$5,000''.

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (2), on''; and

(2) by adding at the end the following:

''(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'' and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: ''Notwithstanding any local court rule, provision of a State constitution, any otherwise applicable nonbankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

''(B) Upon the filing of a report under subparagraph (A)—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

''(ii) the service of any trustee appointed under subsection (d) shall terminate.

''(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).''.

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)''; and

(2) by adding at the end the following:

''(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

''(i) a cash deposit;

''(ii) a letter of credit;

''(iii) a certificate of deposit;

''(iv) a surety bond;

''(v) a prepayment of utility consumption; or

''(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

''(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

''(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

''(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

''(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

''(i) the absence of security before the date of the filing of the petition;

''(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

''(iii) the availability of an administrative expense priority.

''(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.''.

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the'' and inserting ''The''; and

(2) by adding at the end the following:

''(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon ''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''; and

(2) by striking subsection (f), and inserting the following:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders);''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(51D),'' after ''101(3),'' each place it appears.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Judicial Conference of the United States shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

''(b) A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4)(A) whether the debtor is—

''(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

''(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Judicial Conference of the United States shall propose in accordance with section 2073 of title 28 of the United States Code amended Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) a small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help such debtor to understand such debtor's financial condition and plan the such debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''§ 1116. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns and other required government filings; and

''(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

''(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:

''1116. Duties of trustee or debtor in possession in small business cases.''.

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).''.

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

''(i) begin to investigate the debtor's viability;

''(ii) inquire about the debtor's business plan;

''(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

''(iv) attempt to develop an agreed scheduling order; and

''(v) inform the debtor of other obligations;

''(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.''.

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

''(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

''(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

''(i) for which there exists a reasonable justification for the act or omission; and

''(ii) that will be cured within a reasonable period of time fixed by the court.

''(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

''(4) For purposes of this subsection, the term 'cause' includes—

''(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

''(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

''(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan;

''(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.''.

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

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

''(B) the debtor has commenced monthly payments that—

''(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

''(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);''.

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as amended by sections 106 and 304, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(3) by adding after paragraph (6) the following:

''(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (10), by striking ''and'' at the end; and

(2) by adding at the end the following:

''(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and''.

(c) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

''(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;''.

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended—

(1) by striking ''appoint'' and inserting ''order the appointment of'', and

(2) by adding at the end the following: ''The United States trustee shall appoint any such committee.''.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by striking the last sentence and inserting the following:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562,'' after ''557,''.

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than July 1, 2008, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by debtors;

''(B) the current monthly income, average income, and average expenses of debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the date of the filing of the petition and the closing of the case for cases closed during the reporting period;

''(E) for cases closed during the reporting period—

''(i) the number of cases in which a reaffirmation agreement was filed; and

''(ii)(I) the total number of reaffirmation agreements filed;

''(II) of those cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders entered determining the value of property securing a claim;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.

''(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;
''(3) assets exempted;
''(4) receipts and disbursements of the estate;
''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;
''(6) claims asserted;
''(7) claims allowed; and
''(8) distributions to claimants and claims discharged without payment,
in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

''(1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;
''(2) length of time the case has been pending;
''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;
''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;
''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;
''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and
''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;
(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;
(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and
(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

''(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor serving under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;
(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and
(3) by adding at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), by inserting ''(except that such expenses, other than claims for wages, salaries, or commissions that arise after the date of the filing of the petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of such property.

''(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

''(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;
(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and
(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.''.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting ''at the address and in the manner designated in paragraph (1)'' after ''determination of such tax'';

(2) by striking ''(1) upon payment'' and inserting ''(A) upon payment'';

(3) by striking ''(A) such governmental unit'' and inserting ''(i) such governmental unit'';

(4) by striking ''(B) such governmental unit'' and inserting ''(ii) such governmental unit'';

(5) by striking ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) upon payment'' and inserting ''(C) upon payment'';

(7) by striking ''(b)'' and inserting ''(2)''; and

(8) by inserting before paragraph (2), as so designated, the following:

''(b)(1)(A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

''(i) designate an address for service of requests under this subsection; and

''(ii) describe where further information concerning additional requirements for filing such requests may be found.

''(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.''.

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

''(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''511. Rate of interest on tax claims.''.

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''for a taxable year ending on or before the date of the filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of the filing of the petition''; and

(C) by striking clause (ii) and inserting the following:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

''(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''.

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by sections 321 and 330, is amended by adding at the end the following:

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

''(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

''(B) for a tax or customs duty with respect to which the debtor—

''(i) made a fraudulent return; or

''(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.''.

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title''.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''deferred cash payments,'' and all that follows through the end of the subparagraph, and inserting ''regular installment payments in cash—

''(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

''(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

''(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).''.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law''.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

''(1) the tax was not incurred by a trustee duly appointed or elected under chapter 7 of title 11; or

''(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting ''whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,'' before ''except''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''on or before the earlier of—

''(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

''(B) the date on which the trustee commences final distribution under this section;''.

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting ''or equivalent report or notice,'' after ''a return,'';

(B) in clause (i), by inserting ''or given'' after ''filed''; and

(C) in clause (ii)—

(i) by inserting ''or given'' after ''filed''; and

(ii) by inserting '', report, or notice'' after ''return''; and

(2) by adding at the end the following:

''For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

''(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

''(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

''(B) for any return that is not past due as of the date of the filing of the petition, the later of—

''(i) the date that is 120 days after the date of that meeting; or

''(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

''(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

''(A) a period of not more than 30 days for returns described in paragraph (1); and

''(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

''(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

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

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: '', and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, that no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records,''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

''(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 346 of title 11, United States Code, is amended to read as follows:

''§ 346. Special provisions related to the treatment of State and local taxes

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make such returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is

gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the date of the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

''346. Special provisions related to the treatment of State and local taxes.''.

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

''(j)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''§ 1501. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

''(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

''(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 1502. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding pending in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

''(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

''(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

''§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

''§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 1508. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

''(b) If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

''§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

''§ 1512. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

''§ 1513. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

''(2) indicate whether secured creditors need to file proofs of claim; and

''(3) contain any other information required to be included in such notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 1515. Application for recognition

''(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

''§ 1516. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 1517. Order granting recognition

''(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

''(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body; and

''(3) the petition meets the requirements of section 1515.

''(b) Such foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter may be closed in the manner prescribed under section 350.

''§ 1518. Subsequent information

''From the time of filing the petition for recognition of a foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of such foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 1519. Relief that may be granted upon filing petition for recognition

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1520. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 1521. Relief that may be granted upon recognition

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected

by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

''(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 1524. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.

''§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

''§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 1529. Coordination of a case under this title and a foreign proceeding

''If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) If the case in the United States pending at the time the petition for recognition of such foreign proceeding is filed—

''(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

''(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

''(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

''(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

''§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''15. Ancillary and Other Cross-Border Cases ..... 1501''.

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(k) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15''.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

''§ 1410. Venue of cases ancillary to foreign proceedings

''A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

''(1) in which the debtor has its principal place of business or principal assets in the United States;

''(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

''(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.'';

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking '', 304,'' each place it appears;

(6) in section 305(a) by striking paragraph (2) and inserting the following:

''(2)(A) a petition under section 1515 for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''; and

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ''(b)''.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Board determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard

to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(v) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds

by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap,future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(g) DEFINITION OF TRANSFER.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) (as amended by subsection (f) of this section) is amended by adding at the end the following new clause:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (12)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Board''.

SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

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

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

(b) NATIONAL CREDIT UNION ADMINISTRATION BOARD.—

(1) IN GENERAL.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (E) (as amended by section 901(h)), by striking ''other than paragraph (12) of this subsection, subsection (b)(9)'' and inserting ''other than subsections (b)(9) and (c)(10)''; and

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

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 207(c)(12)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST RECEIVER AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—

Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

(b) INSURED CREDIT UNIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1787(c)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

''(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

''(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

''(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

''(ii) the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST LIQUIDATING AGENT AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 207(c)(10) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) LIQUIDATION.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the credit union or the insolvency or financial condition of the credit union for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A credit union organized by the Board, for which a conservator is appointed either—

''(I) immediately upon the organization of the credit union; or

''(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.''.

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

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

''(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

(b) INSURED CREDIT UNIONS.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended—

(1) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the credit union in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

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

''(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section (a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by inserting after clause (vi) (as added by section 901(f)) the following new clause:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and''; and

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

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new section:

"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

''(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

''(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

''(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

(3) by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting '', pledged to, under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of

property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26) the following:

''(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

''(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(C) by inserting ''or financial participant'' after ''swap participant''; and

(2) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

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

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement'';

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements'';

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''; and

(4) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

''(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded

on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

''(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

''(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.''.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'';

(2) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)''; and

(3) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each place such term appears;

(3) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

(7) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by striking the second sentence and inserting the following: ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.'';

(8) in section 556, by inserting '', financial participant,'' after ''commodity broker'';

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each place such term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 908. RECORDKEEPING REQUIREMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).''.

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental

entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

''§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

''(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date or dates of such liquidation, termination, or acceleration.

''(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

''(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

''(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

''(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

''562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and as in effect on June 30, 2005, is hereby reenacted.

(2) EFFECTIVE DATE OF REENACTMENT.—Paragraph (1) shall take effect on July 1, 2005.

(b) AMENDMENTS—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act.

(c) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(18),'' after ''101(3),'' each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, as amended by section 213, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''for the taxable year preceding the taxable year'' and inserting the following:

''for—

''(i) the taxable year preceding; or

''(ii) each of the 2d and 3d taxable years preceding;

the taxable year''.

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.''.

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d) A plan may not be modified under this section—

''(1) to increase the amount of any payment due before the plan as modified becomes the plan;

''(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

''(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient

funds to carry on the farming operation after the plan is completed.''.

SEC. 1007. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' means—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

''(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;''; and

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1203, by inserting ''or commercial fishing operation'' after ''farm''; and

(3) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)''.

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(e) APPLICABILITY.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

''(27A) 'health care business'—

''(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

''(i) the diagnosis or treatment of injury, deformity, or disease; and

''(ii) surgical, drug treatment, psychiatric, or obstetric care; and

''(B) includes—

''(i) any—

''(I) general or specialized hospital;

''(II) ancillary ambulatory, emergency, or surgical treatment facility;

''(III) hospice;

''(IV) home health agency; and

''(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

''(ii) any long-term care facility, including any—

''(I) skilled nursing facility;

''(II) intermediate care facility;

''(III) assisted living facility;

''(IV) home for the aged;

''(V) domiciliary care facility; and

''(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;''.

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

''(40A) 'patient' means any individual who obtains or receives services from a health care business;

''(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;''.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''§ 351. Disposal of patient records

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

''(1) The trustee shall—

''(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

''(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

''(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

''(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

''(A) if the records are written, shredding or burning the records; or

''(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''351. Disposal of patient records.''.

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by section 445, is amended by adding at the end the following:

''(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

''(A) in disposing of patient records in accordance with section 351; or

''(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and''.

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

(1) APPOINTMENT OF OMBUDSMAN.—Title 11, United States Code, as amended by section 232, is amended by inserting after section 332 the following:

''§ 333. Appointment of patient care ombudsman

''(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of

the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

''(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

''(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

''(b) An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

''(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

''(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

''(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

''(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding at the end the following:

''333. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting ''an ombudsman appointed under section 333, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by sections 102, 219, and 446, is amended by adding at the end the following:

''(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, as amended by section 446, is amended by striking ''and (11)'' and inserting ''(11), and (12)''.

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

''(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph (other than paragraph (54A)), by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A), (38), and (54A), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph and inserting a semicolon;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) in paragraph (54A)—

(A) by striking ''the term'' and inserting ''The term''; and

(B) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3),'' after ''522(d),'' each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1), by striking ''product'' each place it appears and inserting ''products''.

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by sections 215 and 314, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);

(2) in subsection (a)(9), by striking ''motor vehicle'' and inserting ''motor vehicle, vessel, or aircraft''; and

(3) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'' each place it appears;

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '' 'bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '' 'document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN OF REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213 and 321, is amended by adding at the end the following:

''(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

''(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the filing of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2005''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the southern district of Georgia.

(F) Three additional bankruptcy judges for the district of Maryland.

(G) One additional bankruptcy judge for the eastern district of Michigan.

(H) One additional bankruptcy judge for the southern district of Mississippi.

(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the northern district of New York.

(L) One additional bankruptcy judge for the southern district of New York.

(M) One additional bankruptcy judge for the eastern district of North Carolina.

(N) One additional bankruptcy judge for the eastern district of Pennsylvania.

(O) One additional bankruptcy judge for the middle district of Pennsylvania.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the western district of Tennessee.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—

(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.''; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

''(B) by monthly payments not to exceed the greater of—

''(i) $25; or

''(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of this title—

''(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

''(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).''.

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

''(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;''.

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test under section 707(b), and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

''(A) not later than 45 days after the date of receipt of such goods by the debtor; or

''(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

''(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

''(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.''.

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual who is a debtor in a case under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding after paragraph (7), as added by section 323, the following:

''(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

''(A) the tangible personal property is in the possession of the pledgee or transferee;

''(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

''(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or''.

SEC. 1231. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Subject to subsection (b),'' and inserting ''Subject to subsections (b) and (d)(2),''; and

(2) in subsection (d)—

(A) by inserting ''(1)'' after ''(d)''; and

(B) by adding at the end the following:

''(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

''(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

''(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

''(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

''(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

''(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

''(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

''(C) The parties may supplement the certification with a short statement of the basis for the certification.

''(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

''(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.''.

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—FOR PURPOSES OF RULE 5 OF THE FEDERAL RULES OF APPELLATE PROCEDURE—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such noncontingent, undisputed claims''; and

(2) in subsection (h)(1), by inserting ''as to liability or amount'' before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

''(14B) incurred to pay fines or penalties imposed under Federal election law;''.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

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

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table

promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

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

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(D) DEFINITIONS.—In this paragraph—

''(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

''(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

''(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or

revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of cases filed under title 11 of the United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term ''clear and conspicuous'', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended—

(1) in paragraph (4) by striking ''90'' and inserting ''180'', and

(2) in paragraphs (4) and (5) by striking ''$4,000'' and inserting ''$10,000''.

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended—

(1) in subsections (a) and (b) by striking ''one year'' and inserting ''2 years'',

(2) in subsection (a)—

(A) by inserting ''(including any transfer to or for the benefit of an insider under an employment contract)'' after ''transfer'' the 1st place it appears, and

(B) by inserting ''(including any obligation to or for the benefit of an insider under an employment contract)'' after ''obligation'' the 1st place it appears, and

(3) in subsection (a)(1)(B)(ii)—

(A) in subclause (II) by striking ''or'' at the end,

(B) in subclause (III) by striking the period at the end and inserting ''; or'', and

(C) by adding at the end the following:

''(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.''.

SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m), and

(2) by inserting after subsection (k) the following:

''(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

''(1) modified retiree benefits; and

''(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.''.

SEC. 1404. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD.—The amendment made by section 1402(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1501. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

SEC. 1502. TECHNICAL CORRECTIONS.

(a) CONFORMING AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.—Title 11 of the United States Code, as amended by the preceding provisions of this Act, is amended—

(1) in section 507—

(A) in subsection (a)—

(i) in paragraph (5)(B)(ii) by striking ''paragraph (3)'' and inserting ''paragraph (4)''; and

(ii) in paragraph (8)(D) by striking ''paragraph (3)'' and inserting ''paragraph (4)'';

(B) in subsection (b) by striking ''subsection (a)(1)'' and inserting ''subsection (a)(2)''; and

(C) in subsection (d) by striking ''subsection (a)(3)'' and inserting ''subsection (a)(1)'';

(2) in section 523(a)(1)(A) by striking ''507(a)(2)'' and inserting ''507(a)(3)'';

(3) in section 752(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(4) in section 766—

(A) in subsection (h) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(B) in subsection (i) by striking ''507(a)(1)'' each place it appears and inserting ''507(a)(2)'';

(5) in section 901(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(6) in section 943(b)(5) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(7) in section 1123(a)(1) by striking ''507(a)(1), 507(a)(2)'' and inserting ''507(a)(2), 507(a)(3)'';

(8) in section 1129(a)(9)—

(A) in subparagraph (A) by striking ''507(a)(1) or 507(a)(2)'' and inserting ''507(a)(2) or 507(a)(3)''; and

(B) in subparagraph (B) by striking ''507(a)(3)'' and inserting ''507(a)(1)'';

(9) in section 1226(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(10) in section 1326(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

(b) RELATED CONFORMING AMENDMENT.—Section 6(e) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff(e)) is amended by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 27—COMMENDING THE RESULTS OF THE JANUARY 9, 2005, PALESTINIAN PRESIDENTIAL ELECTIONS

Mr. FRIST (for himself, Mr. REID, Mr. LUGAR, Mr. BIDEN, Mr. LEVIN,, Mr. SUNUNU, Mr. CHAFEE, Mr. HAGEL, and Mr. FEINGOLD) submitted the following resolution; which was considered and agreed to:

S. RES. 27

Whereas on January 9, 2005, for the first time in 9 years, large numbers of Palestinians living in the West Bank, the Gaza Strip, and Jerusalem voted in elections that were widely described by outside monitors as free and fair;

Whereas the Palestinian people elected former Prime Minister Mahmoud Abbas, also known as Abu Mazen, to the office of President of the Palestinian Authority;

Whereas an estimated 65 percent of eligible Palestinians living in the West Bank, the Gaza Strip, and Jerusalem participated in voting at over 1000 polling stations, and for the first time in nearly 30 years, the Palestinian people elected new leadership;

Whereas on January 9, 2005, President of the United States George W. Bush stated that it was a ''historic day for the Palestinian people and for the people of the Middle East'' and that ''Palestinians throughout the West Bank and Gaza took a key step toward building a democratic future by choosing a new president in elections that observers described as largely free and fair'';

Whereas Israel provided important cooperation with the Palestinian Authority to enable the holding of this election, including minimizing delays at checkpoints and redeploying Israeli security forces away from Palestinian population centers;

Whereas the Palestinian election was an important step towards democracy for the Palestinian people and an example to all those in the region who are striving to achieve democracy in their own nation;

Whereas during his inaugural speech, President Abbas stated that ''The winner in

these elections is the great Palestinian people who have created this democratic epic and who will safeguard it'', that ''The people have voted for the rule of law, order, pluralism, the peaceful transfer of authority, and equality for all'', and further ''Let us start implementing the Roadmap'';

Whereas these comments build upon Mr. Abbas' 1993 statements on the White House lawn, where he said that a Palestinian state and an Israeli state could live in ''peaceful coexistence and cooperation'';

Whereas the election of Mahmoud Abbas was hailed around the world as a positive step opening new opportunities to move toward peace between the Palestinian Authority and Israel;

Whereas the Palestinian election provided President Abbas with a mandate from the majority of Palestinians to reject violence and pursue peace with Israel;

Whereas the extent of cooperation between the Israelis and Palestinians during the period leading up to and including election day was unprecedented in the past four years and reflects the potential for future cooperation;

Whereas the election must be followed quickly by concrete steps on the part of the new Palestinian President to meet his commitment to reform the Palestinian security services, establish the rule of law, and do all in his power to combat terrorism;

Whereas a democratic Palestinian Authority will serve as one of the most important building blocks for a viable, free, and stable Palestinian state;

Whereas President Abbas' success likely will depend upon his ability to tangibly and quickly improve the quality of life for Palestinians, and end corruption and violence;

Whereas the United States Government stands ready to work with the new Palestinian President to facilitate a renewed dialogue between the new Palestinian leadership and the Government of Israel with the goal of achieving through the Performance Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (the ''Roadmap''), President George W. Bush's vision of two states, Israel and Palestine, living side by side in peace;

Whereas the Roadmap, endorsed by the United States, Israel, the Palestinian Authority, the European Union, Russia, and the United Nations, remains the only realistic and widely recognized plan for making progress toward peace;

Whereas the policy of the United States is to work toward a just and peaceful resolution of the Palestinian-Israeli conflict based on two democratic states, Israel and Palestine, living side by side in peace and security;

Whereas all parties to the Roadmap have an obligation to urgently provide support for the Palestinian Authority in its efforts to confront and fight terror as well as to assist in the creation of true democratic institutions that will enforce the rule of law; and

Whereas people of all peaceful nations believe peace between the Palestinian Authority and the state of Israel will have far reaching positive effects on the entire region and throughout the world; Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that, on January 9, 2005, Mr. Mahmoud Abbas, also known as Abu Mazen, was elected by the Palestinian people to the office of President of the Palestinian Authority in what were widely described as free and fair elections;

(2) recognizes this milestone in the development of Palestinian democracy and congratulates President Abbas on his election to the presidency of the Palestinian Authority;

(3) commends the efforts of the Israeli Government to facilitate the election;

(4) expresses its respect for the freely expressed will of the Palestinian people, and its intention to work with President Abbas to help the Palestinian people realize the opportunity for a more peaceful, prosperous future;

(5) urges President Abbas and the new Palestinian leadership to abide by its commitments to reform the security services, establish the rule of law, and press on with the development of democratic institutions, including an independent judiciary and an empowered and democratically elected legislature;

(6) urges President Abbas to move quickly to honor his pledges to halt violence and incitement against Israel, dismantle terrorist organizations, and fulfill the Palestinian Authority's obligations according to the terms of the Roadmap;

(7) supports efforts to increase United States assistance to the Palestinian people and to help President Abbas rebuild and reform the Palestinian Authority's institutions, as President Abbas takes actions consistent with the Roadmap, so that they may better serve the Palestinian people;

(8) urges all members of the international community, particularly all parties to the Roadmap, to take advantage of this historic opportunity by providing timely assistance to the new Palestinian Government as it moves forward to implement the Roadmap, to help it build the necessary political, economic, and security infrastructure essential to establishing a viable, democratic state and improving the lives of the Palestinian people;

(9) calls upon Arab states in particular to provide political and financial support to the Palestinian Authority, to support a complete end to terrorism against Israel, to end incitement against it, and to reach out to the State of Israel in friendship and full recognition;

(10) reaffirms the commitment of the United States to the security of Israel as a democratic, Jewish state, and supports the commitment of Israel to fulfill its obligations under the Roadmap; and

(11) reaffirms the commitment of the United States to the Roadmap including realization of the vision of two democratic states, Israel and Palestine, living side by side in peace and security, and looks forward to working closely with the Executive Branch to achieve this vision.

SENATE RESOLUTION 28—DESIGNATING THE YEAR 2005 AS THE ''YEAR OF FOREIGN LANGUAGE STUDY''

Mr. DODD (for himself, Mr. COCHRAN, Mr. AKAKA, Mr. BAUCUS, Mr. BINGAMAN, Mr. DURBIN, Mr. FEINGOLD, Mr. HAGEL, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 28

Whereas according to the 2000 decennial census of the population, 9.3 percent of Americans speak both their native language and another language fluently;

Whereas according to the European Commission Directorate General for Education and Culture, 52.7 percent of Europeans speak both their native language and another language fluently;

Whereas the Elementary and Secondary Education Act of 1965 names foreign language study as part of a core curriculum that includes English, mathematics, science, civics, economics, arts, history, and geography;

Whereas according to the Joint Center for International Language, foreign language study increases a student's cognitive and critical thinking abilities;

Whereas according to the American Council on the Teaching of Foreign Languages, foreign language study increases a student's ability to compare and contrast cultural concepts;

Whereas according to a 1992 report by the College Entrance Examination Board, students with 4 or more years in foreign language study scored higher on the verbal section of the Scholastic Aptitude Test (SAT) than students who did not;

Whereas the Higher Education Act of 1965 labels foreign language study as vital to secure the future economic welfare of the United States in a growing international economy;

Whereas the Higher Education Act of 1965 recommends encouraging businesses and foreign language study programs to work in a mutually productive relationship which benefits the Nation's future economic interest;

Whereas according to the Centers for International Business Education and Research program, foreign language study provides the ability both to gain a comprehensive understanding of and to interact with the cultures of United States trading partners, and thus establishes a solid foundation for successful economic relationships;

Whereas Report 107–592 of the Permanent Select Committee on Intelligence of the House of Representatives concludes that American multinational corporations and nongovernmental organizations do not have the people with the foreign language abilities and cultural exposure that are needed;

Whereas the 2001 Hart-Rudman Report on National Security in the 21st Century names foreign language study and requisite knowledge in languages as vital for the Federal Government to meet 21st century security challenges properly and effectively;

Whereas the American intelligence community stresses that individuals with proper foreign language expertise are greatly needed to work on important national security and foreign policy issues, especially in light of the terrorist attacks on September 11, 2001;

Whereas a 1998 study conducted by the National Foreign Language Center concludes that inadequate resources existed for the development, publication, distribution, and teaching of critical foreign languages (such as Arabic, Vietnamese, and Thai) because of low student enrollment in the United States; and

Whereas a shortfall of experts in foreign languages has seriously hampered information gathering and analysis within the American intelligence community as demonstrated by the 2000 Cox Commission noting shortfalls in Chinese proficiency, and the National Intelligence Council citing deficiencies in Central Eurasian, East Asian, and Middle Eastern languages: Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that foreign language study makes important contributions to a student's cognitive development, our national economy, and our national security;

(2) the Senate—

(A) designates the year 2005 as the ''Year of Foreign Language Study'', during which foreign language study is promoted and expanded in elementary schools, secondary schools, institutions of higher learning, businesses, and government programs; and

(B) requests that the President issue a proclamation calling upon the people of the United States to—

(i) encourage and support initiatives to promote and expand the study of foreign languages; and

(ii) observe the ''Year of Foreign Language Study'' with appropriate ceremonies, programs, and other activities.

SENATE RESOLUTION 29—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

Mr. WARNER submitted the following resolution; from the Committee on Armed Services; which was referred to the Committee on Rules and Administration:

S. RES. 29

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Armed Services is authorized from March 1, 2005, through September 30, 2005; October 1, 2005, through September 30, 2006; and October 1, 2006, through February 28, 2007, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2005, through September 30, 2005, under this resolution shall not exceed $3,859,485, within which amount—

(1) not to exceed $80,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $30,000 may be expended for the training of the professional staff of such committee (under the procedures specified in section 202(j) of that Act).

(b) For the period October 1, 2005, through September 30, 2006, expenses of the committee under this resolution shall not exceed $6,778,457, within which amount—

(1) not to exceed $75,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $30,000 may be expended for the training of the professional staff of such committee (under the procedures specified in section 202(j) of that Act).

(c) For the period October 1, 2006, through February 28, 2007, expenses of the committee under this resolution shall not exceed $2,886,176, within which amount—

(1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $30,000 may be expended for the training of the professional staff of such committee (under the procedures specified in section 202(j) of that Act).

SENATE RESOLUTION 30—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. STEVENS submitted the following resolution; from the Committee on Commerce, Science, and Transportation; which was referred to the Committee on Rules and Administration:

S. 30

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Commerce, Science, and Transportation is authorized from March 1, 2005, through September 30, 2005, October 1, 2005, through September 30, 2006, and October 1, 2006, through February 28, 2007, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the Committee for the period from March 1, 2005, through September 30, 2005, under this resolution shall not exceed $3,463,046, of which amount (1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $50,000 may be expended for the training of the professional staff of the Committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2005, through September 30, 2006, expenses of the Committee under this resolution shall not exceed $6,080,372, of which amount (1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $50,000 may be expended for the training of the professional staff of the Committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2006, through February 28, 2007, expenses of the committee under this resolution shall not exceed $2,588,267, of which amount (1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $50,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2006, and February 28, 2007, respectively.

SEC. 4. Expenses of the Committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, (4) for payments to the Postmaster, United States Senate, (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, (6) for the payment of Senate Recording and Photographic Services, or (7) for the payment of franked and mass mail costs by the Office of the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the Committee from March 1, 2005, through September 30, 2005, October 1, 2005, through September 30, 2006, and October 1, 2006, through February 28, 2007, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations''.

SENATE RESOLUTION 31—EXPRESSING THE SENSE OF THE SENATE THAT THE WEEK OF AUGUST 7, 2005, BE DESIGNATED AS ''NATIONAL HEALTH CENTER WEEK'' IN ORDER TO RAISE AWARENESS OF HEALTH SERVICES PROVIDED BY COMMUNITY, MIGRANT, PUBLIC HOUSING, AND HOMELESS HEALTH CENTERS, AND FOR OTHER PURPOSES

Mr. COLEMAN (for himself and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 31

Whereas community, migrant, public housing, and homeless health centers (''health centers'') are nonprofit, community owned and operated health providers and are vital to the Nation's communities;

Whereas there are more than 1,000 such health centers serving more than 15,000,000 people in over 3,600 communities;

Whereas health centers are found in urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands;

Whereas health centers have provided cost-effective, high-quality health care to the Nation's poor and medically underserved (including the working poor, the uninsured, and many high-risk and vulnerable populations), acting as a vital safety net in the Nation's health delivery system;

Whereas health centers provide care to 1 of every 7 uninsured individuals, 1 of every 9 Medicaid beneficiaries, 1 of every 7 people of color, and 1 of every 9 rural Americans, all of whom would otherwise lack access to health care;

Whereas health centers are engaged with other innovative programs in primary and preventive care to reach out to over 621,000 homeless persons and more than 709,000 farm workers;

Whereas health centers make health care responsive and cost-effective by integrating the delivery of primary care with aggressive outreach, patient education, transportation, translation, and enabling support services;

Whereas health centers increase the use of preventive health services such as immunizations, Pap smears, mammograms, and glaucoma screenings;

Whereas in communities served by health centers, infant mortality rates have been reduced over the past 4 years even as infant mortality rates across the country have risen;

Whereas health centers are built by community initiative, and run by the patients they serve;

Whereas Federal grants provide seed money empowering health centers to find partners and resources to recruit doctors and needed health professionals;

Whereas Federal grants on average contribute 25 percent of a health center's budget, with the remainder provided by State and local governments, Medicare, Medicaid, private contributions, private insurance, and patient fees;

Whereas there are more than 100 health centers that receive no Federal grant funding, yet continue to serve their communities regardless of their patients' ability to pay;

Whereas all health centers tailor their services to fit the special needs and priorities of their communities, working together with schools, businesses, churches, community organizations, foundations, and State and local governments;

Whereas all health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job;

Whereas all health centers encourage citizen participation and provide jobs for nearly 100,000 community residents; and

Whereas the designation of the week of August 7, 2005, as ''National Health Center Week'' would raise awareness of the health services provided by all health centers: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of August 7, 2005, as ''National Health Center Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Mr. COLEMAN. Mr. President, this resolution would designate August 7, 2005 as ''National Health Center Week'' in order to raise awareness of health services provided by community, migrant, public housing, and homeless centers.

I hope my colleagues will join me in cosponsoring this important resolution and I look forward to its passage in the Senate.

SENATE RESOLUTION 32—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. LUGAR submitted the following resolution; from the Committee on Foreign Relations; which was referred to the Committee on Rules and Administration:

S. RES. 32

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Foreign Relations, is authorized from March 1, 2005, through September 30, 2005; October 1, 2005, through September 30, 2006; and October 1, 2006, through February 28, 2007, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2005, through September 30, 2005, under this resolution shall not exceed $3,290,588, of which amount (1) not to exceed $100,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2005, through September 30, 2006, expenses of the committee under this resolution shall not exceed $5,769,387, of which amount (1) not to exceed $100,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2006, through February 28, 2007, expenses of the committee under this resolution shall not exceed $2,452,849, of which amount (1) not to exceed $100,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2007.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2005, through September 30, 2005; October 1, 2005, through September 30, 2006; and October 1, 2006, through February 28, 2007, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

SENATE RESOLUTION 33—URGING THE GOVERNMENT OF CANADA TO END THE COMMERCIAL SEAL HUNT

Mr. LEVIN (for himself, Ms. COLLINS, Mr. LUGAR, Mr. REED, Mr. LAUTENBERG, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. JEFFORDS, Mr. WYDEN, Ms. CANTWELL, Mr. DODD, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Mrs. MURRAY, and Mr. DORGAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 33

Whereas on November 15, 2004, the Government of Canada opened a commercial hunt for seals in the waters off the east coast of Canada;

Whereas an international outcry regarding the plight of the seals hunted in Canada resulted in the 1983 ban by the European Union of whitecoat and blueback seal skins and the subsequent collapse of the commercial seal hunt in Canada;

Whereas the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) bars the import into the United States of any seal products;

Whereas in February 2003, the Ministry of Fisheries and Oceans in Canada authorized the highest quota for harp seals in Canadian history, allowing nearly 1,000,000 seals to be killed over a 3-year period;

Whereas harp seal pups can be legally hunted in Canada as soon as they have begun to molt their white coats at approximately 12 days of age;

Whereas 95 percent of the seals culled over the past 5 years were pups between just 12 days and 12 weeks of age, many of which had not yet eaten their first solid meal or learned to swim;

Whereas a report by an independent team of veterinarians invited to observe the hunt by the International Fund for Animal Welfare concluded that the seal hunt failed to comply with basic animal welfare regulations in Canada and that governmental regulations regarding humane killing were not being respected or enforced;

Whereas the veterinary report concluded that as many as 42 percent of the seals studied were likely skinned while alive and conscious;

Whereas the commercial slaughter of seals in the Northwest Atlantic is inherently cruel, whether the killing is conducted by clubbing or by shooting;

Whereas many seals are shot in the course of the hunt, but escape beneath the ice where they die slowly and are never recovered, and these seals are not counted in official kill statistics, making the actual kill level far higher than the level that is reported;

Whereas the commercial hunt for harp and hooded seals is a commercial slaughter carried out almost entirely by non-Native people from the East Coast of Canada for seal fur, oil, and penises (used as aphrodisiacs in some Asian markets);

Whereas the fishing and sealing industries in Canada continue to justify the expanded seal hunt on the grounds that the seals in the Northwest Atlantic are preventing the recovery of cod stocks, despite the lack of any credible scientific evidence to support this claim;

Whereas 2 Canadian Government marine scientists reported in 1994 that the true cause of cod depletion in the North Atlantic was over-fishing, and the consensus among the international scientific community is that seals are not responsible for the collapse of cod stocks;

Whereas harp and hooded seals are a vital part of the complex ecosystem of the Northwest Atlantic, and because the seals consume predators of commercial cod stocks, removing the seals might actually inhibit recovery of cod stocks;

Whereas certain ministries of the Government of Canada have stated clearly that

there is no evidence that killing seals will help groundfish stocks to recover; and

Whereas the persistence of this cruel and needless commercial hunt is inconsistent with the well-earned international reputation of Canada: Now, therefore, be it

Resolved, That the Senate urges the Government of Canada to end the commercial hunt on seals that opened in the waters off the east coast of Canada on November 15, 2004.

Mr. LEVIN. Mr. President, according to the highly respected Humane Society of the United States, HSUS, Canada's government has authorized the slaughter of nearly 1 million seals over 3 years, 2004–2006, most of them between 12 days and 12 weeks old. This is the largest kill quota in history, which means that Canada is facilitating the artificial extension of an industry that has ceased to exist in most developed countries.

Canada officially opened its 6 months commercial seal hunt on November 15, 2004, paving the way for hundreds of thousands of baby seals to be killed for their fur during the 2004–2005 season. Today, I am joined by Senators COLLINS, LUGAR, REED, LAUTENBERG, FEINSTEIN, JOHNSON, JEFFORDS, WYDEN, CANTWELL, DODD, FEINGOLD, DURBIN, SCHUMER, MURRAY, and DORGAN in submitting a resolution that urges the Government of Canada to end this senseless, inhumane slaughter. Last year, we submitted a similar resolution, which was favorably reported by the Senate Foreign Relations Committee.

Opposition to the seal hunt is mounting. Canada's own people don't support the hunt. Polling shows that 71 percent of Canadians—including 60 percent of Atlantic Canadians—believe the seal hunt should be banned outright or limited to seals over one year of age. Last week, Canada's conservative newspaper, National Post, called for an end to the hunt. In January 2004, the Belgian government announced its intention to prohibit the sale of seal fur; and in November 2003, 166 members of the British House of Commons signed an Early Day Motion opposing Canada's seal hunt. That motion received strong support from Britain's Foreign Office Minister, Mike O'Brien. The American people don't support it either. According to a 2002 poll conducted by Penn, Schoen and Berland, 79 percent of American voters oppose Canada's seal hunt; and the U.S. Government has gone on record in opposition to this senseless slaughter, as noted in the attached, January 19, 2005, letter from the U.S. Department of State, in response to a letter Senator COLLINS and I wrote to President Bush, urging him to raise this issue during his November 30, 2004 visit with Canadian Prime Minister Paul Martin.

In 2001, a group of independent veterinarians traveled to observe the seal hunt. What they witnessed was shocking to all who are concerned about the humane treatment of animals. The images are difficult to envision but harder to believe: skinning oflive animals and the dragging of live seals across the ice using steel hooks.

Few would argue that this industry still serves a legitimate purpose. Even in Newfoundland, where 93 percent of the hunt occurs, the economic contribution of the seal hunt is marginal. Exports of seal products from Newfoundland account for less than one-tenth of one percent of the province's total exports. Is that worth the damage the seal hunt causes to Canada's reputation? Out of a population of over half a million people, only about 4,000 Newfoundlanders participate in the hunt. That's a total take home pay of well under $800 per sealer.

Many believe that it makes little sense to continue an industry that only operates for a few weeks a year, in which the concentrated killings takes place. Moreover, it employs only a few hundred people on a seasonal, part-time basis.

The clubbing of baby seals can't be defended or justified, and Canada should end it just as we ended the Alaska baby seal massacre 20 years ago.

I ask unanimous consent that the January 19, 2005 letter from the U.S. State Department be printed in the RECORD.

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

DEPARTMENT OF STATE,
Washington, DC, January 19, 2005.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: This is in response to your letter to the President of November 24, 2004 regarding Canadian commercial seal hunting. The White House has requested that the Department of State respond. We regret the delay in responding. Unfortunately, this letter was not received in the Department of State until mid-December, well after the referenced meeting between President Bush and Prime Minister Paul Martin of Canada.

We are aware of Canada's seal hunting activities and of the opposition to it expressed by many Americans. Furthermore, we can assure you that the United States has a long-standing policy opposing the hunting of seals and other marine mammals absent sufficient safeguards and information to ensure that the hunting will not adversely impact the affected marine mammal population or the ecosystem of which it is a part. The United States policy is reflected in the Marine Mammal Protection Act of 1972 (MMPA) which generally prohibits, with narrow and specific exceptions, the taking of marine mammals in waters or lands subject to the jurisdiction of the United States and the importation of marine mammals and marine mammal products into the United States.

The United States has made known to the Government of Canada its objections and the objections of concerned American legislators and citizens to the Canadian commercial seal hunt on numerous occasions over recent years. The United States has also opposed Canada's efforts within the Arctic Council to promote trade in sealskins and other marine mammal products.

We hope this information is helpful to you. Please do not hesitate to contact us if we can be of assistance in this or any other matter.

Sincerely,

NANCY POWELL,
(For Paul V. Kelly, Asst. Secretary,
Legislative Affairs).

SENATE CONCURRENT RESOLUTION 8—EXPRESSING THE SENSE OF CONGRESS THAT THERE SHOULD CONTINUE TO BE PARITY BETWEEN THE ADJUSTMENTS IN THE PAY OF MEMBERS OF THE UNIFORMED SERVICES AND THE ADJUSTMENTS IN THE PAY OF CIVILIAN EMPLOYEES OF THE UNITED STATES

Mr. SARBANES (for himself, Ms. COLLINS, Mr. AKAKA, Mr. WARNER, Mr. LIEBERMAN, Mr. ALLEN, Ms. MIKULSKI, Ms. SNOWE, Mr. JOHNSON, Mr. DAYTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. DURBIN, Mr. CORZINE, Ms. LANDRIEU, Mr. BINGAMAN, and Mrs. MURRAY) submitted the following concurrent resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. CON. RES. 8

Whereas members of the uniformed services of the United States and civilian employees of the United States contribute to the general welfare of the United States, maintain the Nation's defenses, and ensure the security of the homeland;

Whereas civilian employees of the United States play a crucial role in the fight against terrorism, as exemplified by—

(1) the civilian employees of the Department of Homeland Security and the Department of Defense who are working to ensure the security of the United States;

(2) the employees of the Intelligence Community and Federal law enforcement who have played a critical role in the investigation of the September 11, 2001, terrorist attacks and who are working to prevent further terrorist attacks;

(3) the civilian employees of the Department of State who are working to maintain a broad and sustained international commitment to wipe out terrorism around the world;

(4) the numerous skilled trade and craft civilian employees of the Federal Government who work side-by-side with the men and women of the Armed Forces to maintain and deploy our air and sea fleet safely and swiftly; and

(5) the employees of the Centers for Disease Control and Prevention within the Department of Health and Human Services who work every day protecting Americans from bioterrorism and those at the Department of Agriculture who strive to keep the Nation's food supply safe;

Whereas Americans depend on civilian employees of the United States for a vast array of important services from high profile disaster relief in times of national or international emergencies to the reliable administration of the Social Security program;

Whereas civilian employees of the United States will continue to serve and defend the United States;

Whereas in fiscal year 2005 the Senate budget resolution supported an across-the-board pay raise for both members of the uniformed services and civilian employees of the United States; and

Whereas the House of Representatives adopted House Resolution 581 affirming the bipartisan commitment to pay parity for fiscal year 2005: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that rates of pay for all civilian employees of the United States should be adjusted at the same time, and in the same proportion, as are rates of pay for members of the uniformed services.

Mr. SARBANES. Mr. President, I am pleased to join with Senators COLLINS, AKAKA, WARNER, LIEBERMAN, ALLEN, MIKULSKI, SNOWE, JOHNSON, DAYTON, LAUTENBERG, KENNEDY, DURBIN, CORZINE, LANDRIEU, BINGAMAN, and MURRAY in submitting a resolution expressing the sense of the Congress that parity between Federal civilian pay and military pay should be maintained.

During this unprecedented time in our Nation's history, both members of the uniformed services and civilian Federal employees are maintaining our Nation's defenses, ensuring the security of the homeland, and making remarkable contributions to the general welfare of the United States. Pay parity among all those who serve our Nation appropriately recognizes the crucial work and honorable sacrifices of the civilian Federal workforce. The contributions of civilian employees range from Department of Defense employees working alongside the military in hostile environments abroad to those at the Department of Health and Human Services who consistently achieve critical breakthroughs in science and medicine. The sacrifice of these individuals is made evident by individuals such as CIA employee Mike Spann, the first casualty of the conflict in Afghanistan; Lawrence Foley, an employee of the U.S. Agency for International Development who was assassinated by terrorists in Jordan; Joseph Curseen, Jr. and Thomas Morris, Jr., postal workers who died as a result of the anthrax attacks of 2001; and many others.

Congress has demonstrated a bipartisan and longstanding commitment to the principle of pay parity by providing for equal pay adjustments in each of the last three years and 17 of the last 19 years. The budget proposal presented to Congress for Fiscal Year 2005 included a 3.5 percent pay raise for members of the uniformed services, but only a 1.5 percent pay raise for our dedicated public servants. However, both Houses of Congress reaffirmed their support for equal pay by including a 3.5 percent raise for both civilian and military employees in their respective resolutions and relevant Fiscal Year 2005 appropriations bills.

Providing equitable pay raises for federal employees is not just an issue of fairness. It is also critical to recruiting and retaining talented individuals in public service, and therefore, to successfully administering important Federal programs. Our Federal Government is facing a ''human capital'' crisis that threatens institutional experience and knowledge at every level. Within the next five years, our government could lose up to half of its workforce to retirement. These vacancies will occur in an era in which those entering the workforce are far less likely to join public service. Numerous studies by groups such as the Partnership for Public Service and the Council for Excellence in Government indicate that young Americans have developed a more positive attitude towards government and politics in recent years, but are still unlikely to consider government service as a career. One way to address this looming crisis is to take tangible steps to make Federal service more financially attractive.

I should note that despite the pressing need to draw more qualified candidates to Federal service, the Federal Employee Pay Comparability Act (FEPCA)—designed to bring Federal pay in line with private sector pay—has never been fully implemented. If we are serious about resolving our Federal workforce shortage issue, we must also begin a conversation about implementing FEPCA. At a minimum, however, we should recognize the importance of civilian Federal employees by providing equal pay raises to all those who choose to serve our country. Otherwise we risk further reducing the number of qualified candidates we can recruit to civilian federal jobs.

The dedication of both the uniformed services and our civilian employees embody the greatness of our Nation, day in and day out, through their commitment to public service. I urge my colleagues to support this resolution so that the contributions of both are recognized in an equitable manner.

AMENDMENTS SUBMITTED & PROPOSED

SA 1. Mr. DURBIN (for Mr. LEAHY (for himself and Mr. HATCH)) proposed an amendment to the bill S. 167, to provide for the protection of intellectual property rights, and for other purposes.

TEXT OF AMENDMENTS

SA 1. Mr. DURBIN (for Mr. LEAHY (for himself and Mr. HATCH)) proposed an agreement to the bill S. 167, to provide for the protection of intellectual property rights, and for other purposes; as follows:

On page 21, line 7, strike ''12'' and insert ''13''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. CHAMBLISS. Mr. President, I announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on February 3, 2005 in SD–106 at 11 a.m. The purpose of this hearing will be to examine the effects of Bovine Spongiform Encephalopathy (BSE) on U.S. imports and exports of cattle and beef.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 1, 2005, at 9:30 a.m., in open session to receive testimony on death benefits and services available to survivors of military personnel and legislative proposals to enhance these benefits.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 1, 2005, at 10 a.m., on pending Committee business.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 1, 2005 at 9 a.m., to hold a hearing on Iraq.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 1, 2005 at 2:30 p.m., to hold a Business Meeting.

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

PRIVILEGES OF THE FLOOR

Mr. SPECTER. Mr. President, I ask unanimous consent that Michael O'Neill, chief counsel of the Senate Judiciary Committee; Brett Tolman, a detailee from the Department of Justice; and Nicholas Rossi, a detailee from the Federal Bureau of Investigation, be granted floor privileges for the first session of the 109th Congress.

Mr. LEAHY. Mr. President, reserving the right to object, and I will not object, I also ask, for purposes of debate on the Gonzales nomination, unanimous consent that floor privileges be granted to Matthew Nelson.

Mr. SPECTER. With that modification, the unanimous consent request is pursued.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I ask unanimous consent that the following individuals be granted privileges of the floor for the duration of the 109th Congress: Grace Chung Becker, a detailee from the U.S. Sentencing Commission; Bruce Artim, a detailee from the National Institute of Health; and Reed O'Connor, a detailee from the Department of Justice.

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

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2005

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from

further consideration of S. 167, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 167) to provide for the protection of intellectual property rights, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that today the Senate will pass the Family Entertainment and Copyright Act of 2005. This bill completes the ambitious package of intellectual property legislation that we undertook, along with our counterparts in the House of Representatives, to enact at the end of the 108th Congress. This is a bipartisan bill that makes important changes to our copyright laws and that will help ensure the preservation of America's cultural heritage. Today's passage of this bill is testimony to the efforts of several in this Chamber to ensure we make good law, capable of swift enactment, and for that I thank in particular the bill's cosponsors, Senators HATCH, FEINSTEIN, ALEXANDER, and CORNYN.

The FECA bill is made up of four important provisions. Title I of the bill contains the ART Act, which will criminalize the use of camcorders to steal movies surreptitiously from the big screen. The second title of the bill is the Family Movie Act, which was designed to allow consumers to view only those portions of movies, in their own homes, that they want to. Title III of the bill contains the Film Preservation Act, legislation that I sponsored in the last Congress. The Film Preservation Act will allow the Library of Congress to continue its important work in preserving America's fading film treasures. What is more, the bill will assist libraries, museums, and archives in preserving films, and in making those works available to researchers and the public. Finally, the bill contains the Preservation of Orphan Works Act, which will correct a drafting error in the Sonny Bono Copyright Term Extension Act and will allow libraries to create copies of orphan works—copyrighted materials that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price.

I thank the cosponsors of the Family Entertainment and Copyright Act, and I hope the House of Representatives will move with dispatch to pass and send to the President this consensus legislation.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the technical amendment that is at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 1) was agreed to, as follows:

On page 21, line 7, strike ''12'' and insert ''13''.

The bill (S. 167), as amended, was read the third time and passed, as follows:

S. 167

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 ''Family Entertainment and Copyright Act of 2005''.

TITLE I—ARTISTS' RIGHTS AND THEFT PREVENTION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Artists' Rights and Theft Prevention Act of 2005'' or the ''ART Act''.

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

''§ 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

''(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

''(1) be imprisoned for not more than 3 years, fined under this title, or both; or

''(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

''(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

''(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

''(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

''(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

''(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

''(e) VICTIM IMPACT STATEMENT.—

''(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

''(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

''(A) producers and sellers of legitimate works affected by conduct involved in the offense;

''(B) holders of intellectual property rights in the works described in subparagraph (A); and

''(C) the legal representatives of such producers, sellers, and holders.

''(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

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

''(1) TITLE 17 DEFINITIONS.—The terms 'audiovisual work', 'copy', 'copyright owner', 'motion picture', 'motion picture exhibition facility', and 'transmit' have, respectively, the meanings given those terms in section 101 of title 17.

''(2) AUDIOVISUAL RECORDING DEVICE.—The term 'audiovisual recording device' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:

''2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.''.

(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of ''Motion pictures'' the following: ''The term ''motion picture exhibition facility'' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.''.

SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PROHIBITED ACTS.—Section 506(a) of title 17, United States Code, is amended to read as follows:

''(a) CRIMINAL INFRINGEMENT.—

''(1) IN GENERAL.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

''(A) for purposes of commercial advantage or private financial gain;

''(B) by the reproduction or distribution, including by electronic means, during any 180–day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

''(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

''(2) EVIDENCE.—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

''(3) DEFINITION.—In this subsection, the term 'work being prepared for commercial distribution' means—

''(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

''(i) the copyright owner has a reasonable expectation of commercial distribution; and

''(ii) the copies or phonorecords of the work have not been commercially distributed; or

''(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

''(i) has been made available for viewing in a motion picture exhibition facility; and

''(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.''.

(b) CRIMINAL PENALTIES.—Section 2319 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''Whoever'' and inserting ''Any person who''; and

(B) by striking ''and (c) of this section'' and inserting '', (c), and (d)'';

(2) in subsection (b), by striking ''section 506(a)(1)'' and inserting ''section 506(a)(1)(A)'';

(3) in subsection (c), by striking ''section 506(a)(2) of title 17, United States Code'' and inserting ''section 506(a)(1)(B) of title 17'';

(4) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(5) by adding after subsection (c) the following:

''(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

''(1) shall be imprisoned not more than 3 years, fined under this title, or both;

''(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

''(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

''(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).''; and

(6) in subsection (f), as redesignated—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(3) the term 'financial gain' has the meaning given the term in section 101 of title 17; and

''(4) the term 'work being prepared for commercial distribution' has the meaning given the term in section 506(a) of title 17.''.

SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PREREGISTRATION.—Section 408 of title 17, United States Code, is amended by adding at the end the following:

''(f) PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.—

''(1) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

''(2) CLASS OF WORKS.—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

''(3) APPLICATION FOR REGISTRATION.—Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

''(A) an application for registration of the work;

''(B) a deposit; and

''(C) the applicable fee.

''(4) EFFECT OF UNTIMELY APPLICATION.—An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

''(A) 3 months after the first publication of the work; or

''(B) 1 month after the copyright owner has learned of the infringement.''.

(b) INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended by inserting ''preregistration or'' after ''shall be instituted until''.

(c) EXCLUSION.—Section 412 of title 17, United States Code, is amended by inserting after ''section 106A(a)'' the following: '', an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement,''.

SEC. 105. FEDERAL SENTENCING GUIDELINES.

(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.

(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) determine whether the scope of ''uploading'' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.

TITLE II—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Family Movie Act of 2005''.

SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.

(a) IN GENERAL.—Section 110 of title 17, United States Code, is amended—

(1) in paragraph (9), by striking ''and'' after the semicolon at the end;

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

(3) by inserting after paragraph (10) the following:

''(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.''; and

(4) by adding at the end the following:

''For purposes of paragraph (11), the term 'making imperceptible' does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

''Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.''.

(b) EXEMPTION FROM TRADEMARK INFRINGEMENT.—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

''(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17, United States Code, and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this Act. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this Act, of a person for conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

''(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures that

the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

''(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on the date of the enactment of the Family Movie Act of 2005.

''(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such party that engages in conduct described in paragraph (11) of section 110 of title 17, United States Code, is liable for trademark infringement by reason of such conduct.''.

(c) DEFINITION.—In this section, the term ''Trademark Act of 1946'' means the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

TITLE III—NATIONAL FILM PRESERVATION

Subtitle A—Reauthorization of the National Film Preservation Board

SEC. 301. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Act of 2005''.

SEC. 302. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended—

(1) in subsection (b)—

(A) by striking ''film copy'' each place that term appears and inserting ''film or other approved copy'';

(B) by striking ''film copies'' each place that term appears and inserting ''film or other approved copies''; and

(C) in the third sentence, by striking ''copyrighted'' and inserting ''copyrighted, mass distributed, broadcast, or published''; and

(2) by adding at the end the following:

''(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, shall—

''(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

''(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

''(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.''.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking ''20'' and inserting ''22'';

(2) in subsection (a) (2) by striking ''three'' and inserting ''5'';

(3) in subsection (d) by striking ''11'' and inserting ''12''; and

(4) by striking subsection (e) and inserting the following:

''(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.''.

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179p) is amended by adding at the end the following:

''(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

''(1) title 17, United States Code; and

''(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.''.

(d) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is amended—

(1) in paragraph (1), by inserting ''in any format'' after ''or any copy''; and

(2) in paragraph (2), by striking ''or film copy'' and inserting ''in any format''.

(e) EFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking ''7'' and inserting ''13''.

Subtitle B—Reauthorization of the National Film Preservation Foundation

SEC. 311. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Foundation Reauthorization Act of 2005''.

SEC. 312. REAUTHORIZATION AND AMENDMENT.

(a) BOARD OF DIRECTORS.—Section 151703 of title 36, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking ''nine'' and inserting ''12''; and

(2) in subsection (b)(4), by striking the second sentence and inserting ''There shall be no limit to the number of terms to which any individual may be appointed.''.

(b) POWERS.—Section 151705 of title 36, United States Code, is amended in subsection (b) by striking ''District of Columbia'' and inserting ''the jurisdiction in which the principal office of the corporation is located''.

(c) PRINCIPAL OFFICE.—Section 151706 of title 36, United States Code, is amended by inserting '', or another place as determined by the board of directors'' after ''District of Columbia''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed $530,000 for each of the fiscal years 2005 through 2009. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

''(b) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.''.

TITLE IV—PRESERVATION OF ORPHAN WORKS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Preservation of Orphan Works Act''.

SEC. 402. REPRODUCTION OF COPYRIGHTED WORKS BY LIBRARIES AND ARCHIVES.

Section 108(i) of title 17, United States Code, is amended by striking ''(b) and (c)'' and inserting ''(b), (c), and (h)''.

APPOINTMENT

The PRESIDING OFFICER. The Chair, in accordance with Public Law 93–618, as amended by Public Law 100–418, on behalf of the President pro tempore and upon the recommendation of the Chairman of the Committee on Finance, appoints the following Members of the Finance Committee as congressional advisers on trade policy and negotiations: the Senator from Iowa, Mr. GRASSLEY; the Senator from Utah, Mr. HATCH; the Senator from Mississippi, Mr. LOTT; the Senator from Montana, Mr. BAUCUS; and the Senator from West Virginia, Mr. ROCKEFELLER.

DISCHARGE AND REFERRAL OF S. 45

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be discharged from further consideration of S. 45, and the bill be referred to the Committee on the Judiciary.

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

APPOINTMENT OF SENATOR BURR TO READ WASHINGTON'S FAREWELL ADDRESS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, appoints the Senator from North Carolina, Mr. BURR, to read Washington's Farewell Address on Friday, February 18, 2005.

COMMENDING THE RESULTS OF THE PALESTINIAN PRESIDENTIAL ELECTIONS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 27, which was 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. 27) commending the results of the January 9, 2005, Palestinian presidential elections.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, as we celebrate the extraordinary elections in Iraq, let us also recognize the historic progress being made by the Palestinian people toward democracy.

On January 9, for the first time in 9 years, Palestinians living in the West Bank, the Gaza Strip, and Jerusalem voted in free and fair elections. They elected former Prime Minister Dr. Mahmoud Abbas, also known as Abu Mazen, to be their President.

For the first time in 30 years, they cast their ballots for new leadership. It was a great moment for the Palestinian people. It was, as President Bush remarked, ''a key step toward building a democratic future.''

The election was also a powerful example to all who strive for freedom. It proved that free and fair elections are not only possible in the Middle East, but the hope and right of all people. During his inaugural speech, President Abbas declared that:

The people have voted for the rule of law, order, pluralism, the peaceful transfer of authority, and equality for all.

I commend President Abbas for these important and inspiring words.

This election represents a genuine opportunity for peace. A democratic Palestinian Authority that rejects violence and embraces the rule of law is one of the most important building blocks for a viable, free, and stable Palestinian state.

Israel also deserves praise for its support of the Palestinian election. Israel provided important cooperation with the Palestinian Authority to minimize delays at checkpoints. Israeli security forces were also deployed away from Palestinian population centers.

The U.S. Government stands ready to work with the new Palestinian leadership to build the bridge to that hopeful future. With wise and principled leadership, Palestinians and Israelis can live side by side in peace.

The road ahead will be difficult. Yesterday, Hamas fighters shelled a Jewish settlement in a purported retaliatory strike. I remain hopeful, however, that Palestinian and Israeli leadership will continue to work together to bring the peace. There is a roadmap. There is a will. With the support of the international community, including the Arab world, both sides will find the way.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 27) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 27

Whereas on January 9, 2005, for the first time in 9 years, large numbers of Palestinians living in the West Bank, the Gaza Strip, and Jerusalem voted in elections that were widely described by outside monitors as free and fair;

Whereas the Palestinian people elected former Prime Minister Mahmoud Abbas, also known as Abu Mazen, to the office of President of the Palestinian Authority;

Whereas an estimated 65 percent of eligible Palestinians living in the West Bank, the Gaza Strip, and Jerusalem participated in voting at over 1000 polling stations, and for the first time in nearly 30 years, the Palestinian people elected new leadership;

Whereas on January 9, 2005, President of the United States George W. Bush stated that it was a ''historic day for the Palestinian people and for the people of the Middle East'' and that ''Palestinians throughout the West Bank and Gaza took a key step toward building a democratic future by choosing a new president in elections that observers described as largely free and fair'';

Whereas Israel provided important cooperation with the Palestinian Authority to enable the holding of this election, including minimizing delays at checkpoints and redeploying Israeli security forces away from Palestinian population centers;

Whereas the Palestinian election was an important step towards democracy for the Palestinian people and an example to all those in the region who are striving to achieve democracy in their own nation;

Whereas during his inaugural speech, President Abbas stated that ''The winner in these elections is the great Palestinian people who have created this democratic epic and who will safeguard it'', that ''The people have voted for the rule of law, order, pluralism, the peaceful transfer of authority, and equality for all'', and further ''Let us start implementing the Roadmap'';

Whereas these comments build upon Mr. Abbas' 1993 statements on the White House lawn, where he said that a Palestinian state and an Israeli state could live in ''peaceful coexistence and cooperation'';

Whereas the election of Mahmoud Abbas was hailed around the world as a positive step opening new opportunities to move toward peace between the Palestinian Authority and Israel;

Whereas the Palestinian election provided President Abbas with a mandate from the majority of Palestinians to reject violence and pursue peace with Israel;

Whereas the extent of cooperation between the Israelis and Palestinians during the period leading up to and including election day was unprecedented in the past four years and reflects the potential for future cooperation;

Whereas the election must be followed quickly by concrete steps on the part of the new Palestinian President to meet his commitment to reform the Palestinian security services, establish the rule of law, and do all in his power to combat terrorism;

Whereas a democratic Palestinian Authority will serve as one of the most important building blocks for a viable, free, and stable Palestinian state;

Whereas President Abbas' success likely will depend upon his ability to tangibly and quickly improve the quality of life for Palestinians, and end corruption and violence;

Whereas the United States Government stands ready to work with the new Palestinian President to facilitate a renewed dialogue between the new Palestinian leadership and the Government of Israel with the goal of achieving through the Performance Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (the ''Roadmap''), President George W. Bush's vision of two states, Israel and Palestine, living side by side in peace;

Whereas the Roadmap, endorsed by the United States, Israel, the Palestinian Authority, the European Union, Russia, and the United Nations, remains the only realistic and widely recognized plan for making progress toward peace;

Whereas the policy of the United States is to work toward a just and peaceful resolution of the Palestinian-Israeli conflict based on two democratic states, Israel and Palestine, living side by side in peace and security;

Whereas all parties to the Roadmap have an obligation to urgently provide support for the Palestinian Authority in its efforts to confront and fight terror as well as to assist in the creation of true democratic institutions that will enforce the rule of law; and

Whereas people of all peaceful nations believe peace between the Palestinian Authority and the state of Israel will have far reaching positive effects on the entire region and throughout the world; Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that, on January 9, 2005, Mr. Mahmoud Abbas, also known as Abu Mazen, was elected by the Palestinian people to the office of President of the Palestinian Authority in what were widely described as free and fair elections;

(2) recognizes this milestone in the development of Palestinian democracy and congratulates President Abbas on his election to the presidency of the Palestinian Authority;

(3) commends the efforts of the Israeli Government to facilitate the election;

(4) expresses its respect for the freely expressed will of the Palestinian people, and its intention to work with President Abbas to help the Palestinian people realize the opportunity for a more peaceful, prosperous future;

(5) urges President Abbas and the new Palestinian leadership to abide by its commitments to reform the security services, establish the rule of law, and press on with the development of democratic institutions, including an independent judiciary and an empowered and democratically elected legislature;

(6) urges President Abbas to move quickly to honor his pledges to halt violence and incitement against Israel, dismantle terrorist organizations, and fulfill the Palestinian Authority's obligations according to the terms of the Roadmap;

(7) supports efforts to increase United States assistance to the Palestinian people and to help President Abbas rebuild and reform the Palestinian Authority's institutions, as President Abbas takes actions consistent with the Roadmap, so that they may better serve the Palestinian people;

(8) urges all members of the international community, particularly all parties to the Roadmap, to take advantage of this historic opportunity by providing timely assistance to the new Palestinian Government as it moves forward to implement the Roadmap, to help it build the necessary political, economic, and security infrastructure essential to establishing a viable, democratic state and improving the lives of the Palestinian people;

(9) calls upon Arab states in particular to provide political and financial support to the Palestinian Authority, to support a complete end to terrorism against Israel, to end incitement against it, and to reach out to the State of Israel in friendship and full recognition;

(10) reaffirms the commitment of the United States to the security of Israel as a democratic, Jewish state, and supports the commitment of Israel to fulfill its obligations under the Roadmap; and

(11) reaffirms the commitment of the United States to the Roadmap including realization of the vision of two democratic states, Israel and Palestine, living side by

side in peace and security, and looks forward to working closely with the Executive Branch to achieve this vision.

ORDERS FOR WEDNESDAY, FEBRUARY 2, 2005

Mr. BROWNBACK. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:15 a.m. on Wednesday, February 2. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and at 9:30 a.m. the Senate proceed to executive session and resume consideration of the nomination of Alberto Gonzales to be Attorney General, as provided under the previous order; provided that at 2:30 p.m. Senator BYRD be recognized for up to 1 hour.

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

PROGRAM

Mr. BROWNBACK. Mr. President, tomorrow the Senate will resume consideration of the nomination of Alberto Gonzales to be Attorney General. A number of colleagues spoke on this nomination today, and we expect a full day of debate tomorrow as well. Under the agreement, we will alternate debate in 1-hour blocks throughout the day. Again, I encourage those Members who wish to speak on the Gonzales nomination to contact the chairman and ranking member of the Judiciary Committee as soon as possible.

I also remind my colleagues the President's State of the Union Address will be tomorrow evening. Senators are asked to be in the Senate Chamber by 8:30 tomorrow night in order to proceed as a body to the House Chamber at 8:40 for the 9 o'clock address.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. BROWNBACK. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:52 p.m., adjourned until Wednesday, February 2, 2005, at 9:15 a.m.