

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 4298
FolderID:

Folder Title:
Legislative Referral Memoranda-Various Agencies

Stack:	Row:	Section:	Shelf:	Position:
S	61	7	1	2

URGENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

October 26, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-819

TO: Legislative Liaison Officer -

USTR - Fred Montgomery - (202)395-3475 - 223
CEA - Francine Obermiller - (202)395-5036 - 242
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
ENERGY - Bob Rabben - (202)586-6718 - 209
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
NSC - William H. Itoh - (202)395-3723 - 249
STATE - Julia C. Norton - (202)647-4463 - 225
EPA - Thomas C. Roberts - (202)260-5414 - 326
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
INTERIOR - Danny Consenstein - (202)208-6706 - 329
NEC - Sonia Mathews - (202)456-6722 - 429

FROM: RONALD K. PETERSON (for)
Assistant Director for Legislative Reference

OMB CONTACT: Annette ROONEY (395-7300)
Secretary's line (for simple responses): 395-6194
Karin KIZER (395-3947)

SUBJECT: TREASURY Proposed Testimony on North American
Free Trade Agreement (S. Foreign Relations
10/27)

DEADLINE: 1:00 P.M., Tuesday October 26, 1993

COMMENTS: State is also testifying at this hearing. If you do not respond by the deadline, we will presume your agency has no comment.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
M. Schwartz
M. Walsh
B. Tuocillo
H. Paster

L. Fernandez
K. MCGINTY

(Identical draft to be used for testimony
before House Banking, also October 27)

DRAFT STATEMENT OF JEFFREY SHAFER
ASSISTANT SECRETARY OF THE TREASURY
FOR INTERNATIONAL AFFAIRS
BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C.
OCTODER 27, 1993

U.S.-MEXICAN AGREEMENT ON BORDER ENVIRONMENTAL CLEANUP

It is a pleasure to join Deputy Secretary Wharton in
discussing the NAFTA supplemental agreements and our agreement
with Mexico on border environmental cleanup.

I will focus my remarks on our recent negotiations with
Mexico to improve cooperation and financing for border
environmental infrastructure projects. Our tentative agreement
offers a new model for international cooperation at the local
level to design, finance, and build environmental projects to
resolve problems having a direct impact on U.S. citizens.

The problems of raw sewage dumped in boundary waters, unsafe
drinking water, and inadequate municipal waste disposal on both
sides of the border predate NAFTA, and demand some resolution.
The NAFTA package offers us the opportunity to assure that they
will be addressed. Failure to pass NAFTA would be a major
setback for both U.S. trade opportunities generally and for
environmental efforts along the border.

Our new agreements will create two new institutions. The
first is a U.S.-Mexican Border Environment Cooperation Commission
(BECC) to help coordinate projects and put together financing
packages. The second is a new U.S.-Mexican border financing

- 2 -

facility to provide an additional source of financing at minimum budget cost to support border environmental infrastructure projects.

Border Environment Cooperation Commission

The new coordinating agency will help border states and communities to design and arrange financing for environmental infrastructure projects, and oversee the use of the money. It will give priority initially to wastewater treatment, drinking water, and municipal waste projects. The degree of public and local participation will be unprecedented in an international agreement. This will include a broad-based board of directors with federal, state and local government and public representation, as well as a public advisory council, with members drawn from the border region. There will also be provisions for public notice and comment on proposed projects.

The new commission will have no sovereign power of its own. It can only offer its services to state and local bodies and assist them in cooperative activities.

Let me take you through how this new entity would function. If Ciudad Juarez, Mexico, decided to build a wastewater treatment plant to prevent sewage from being dumped in the Rio Grande, it could ask the Border Environment Cooperation Commission for help in designing the project and in finding financing. The commission would offer that help, and encourage Ciudad Juarez to work with El Paso, its sister city in Texas, in proposing a project.

- 3 -

Once the project is ready for formal review, it will go to the Advisory Council for comment and then on to the Board of Directors for certification. Each project would have an environmental assessment, and the public would be able to comment prior to board consideration. If the directors certified that the project met appropriate engineering, environmental and financial standards, the commission would try to assemble a financing package from private, public and international sources.

Sources of Financing

We want to maximize private sector financing for these projects, based on local user fees to help service debt, but we recognize that continued funding from the Mexican and U.S. governments will be necessary in many cases. We estimate that up to \$8 billion will be needed for border environmental infrastructure projects over the next decade. We see this coming from the following sources:

- (1) private financing, and as needed,
- (2) up to \$2 billion from existing state and local programs, including state revolving funds, municipal revenue bonds, and the colonias program for projects on the U.S. side of the border;
- (3) \$2 billion in new funding from the World Bank and Inter-American Development Bank, offered as loans to Mexico;
- (4) approximately \$1.4 billion in U.S. and Mexican grants (half from the United States);

- 4 -

- (5) some \$2 billion in loans or guarantees for environmental infrastructure projects from the financing facility.

Financing Facility

Financing from the new facility will backstop any shortfall in private sector financing to ensure that projects can be completed. Projects financed by the facility would require certification by the Border Environment Cooperation Commission.

The new facility would be modeled after the multilateral development banks: this will enable us to minimize budgetary resources by leveraging paid-in capital into substantially larger loans and guarantees through borrowing in the capital markets, backed by U.S. and Mexican callable capital.

Total capital of the facility will amount to \$3 billion. The United States and Mexico will provide equal shares of paid-in capital for the financing facility -- \$225 million each, provided over a period of four years -- for a total of \$450 million. Through market borrowings, we believe we can leverage the paid-in capital into \$2 billion initially and perhaps eventually up to \$3 billion in financing via loans and guarantees. Market borrowings would be limited to assure a AAA credit rating for the institution.

The paid-in amounts represent 15 percent of the total capital, which we believe is reasonable for this kind of activity. Callable capital would amount to \$2.55 billion; as

- 5 -

with other multilateral development banks, we would not expect it to be called.

The facility would have a six-member board of directors, composed of three members from the U.S. and three from Mexico, appointed by the respective Governments. The Board would elect a Manager to conduct the business of the facility.

To minimize any new staff requirements, we anticipate that the financing facility would be associated with a multilateral development bank, possibly the Inter-American Development Bank. It could then draw on the expertise of the multilateral bank's staff for borrowing in the capital markets, loan administration, and financial evaluation of the projects.

The cost to the United States for generating up to \$3 billion in loans and guarantees is expected to be only \$36 million annually over four years. That's significant leveraging. While we expect loan charges and investments to defray administrative costs for the financing facility, some small additional costs -- perhaps \$5 million a year for each country -- would be incurred for operating expenses for the Border Environment Cooperation Commission. The price is a small one to help assure clean, safe water in the border area.

Conclusion

Let me close by saying that we have put considerable effort into developing an agreement with measures that address border region environmental infrastructure problems. We have consulted closely with the border states and cities, with key members of

- 6 -

Congress, and with national and local environmental groups. We believe the agreement we have negotiated reflects their interests, and offers a new model for international cooperation at the local level. It is an important complement to the NAFTA agreement.

We have a window of opportunity to help Americans in the border region and across the United States with new trade opportunities, new jobs, and joint environmental commitments. Your support for the NAFTA package is essential to turn that opportunity into reality.

Thank you.

13-PAGES

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

September 10, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1225

TO: Legislative Liaison Officer -

AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
ENERGY - Bob Rabben - (202)586-6718 - 209
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Danny Conenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
CEA - Francine Obermiller - (202)395-5036 - 242
EPA - Thomas C. Roberts - (202)260-5414 - 326
FEMA - Spence W. Perry - (202)646-4105 - 327
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Sonia Mathews - (202)456-6722 - 429
OSTP - Chris Clary - (202)456-7116 - 288
SBA - Christine Swedin - (202)205-6702 - 315
VA - Robert Coy - (202)535-8113 - 229
NCUA - Robert E. Loftus - (703)518-6330 - 280

FROM: JAMES J. JUKES (for)
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: TREASURY Statement for the Record RE: S 1405,
National Flood Insurance Reform Act

DEADLINE: 2PM September 13, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Howard Paster
Greg Simon
Katie McGinty
C. Walden
Ken Ryder
Steve Redburn
Chris Heiser
Jim Jordan

Alan Rhinesmith
Ken Schwartz
Cora Beebe
Jeff Payne
Rob Fairweather
Bruce Beard
Paul Carey

09/10/93

16:24

OMB LRD/ESGG

003

09/10/93 16:21

09 202 6220073

TREAS EXEC SEC

0004/014
PAGE 002

SEP 9 '93 16:48

OTS Draft #5
9/9/93

WRITTEN STATEMENT
of
Jonathan L. Viachter
Acting Director
Office of Thrift Supervision
United States Department of the Treasury
concerning

FLOOD INSURANCE

before the

Subcommittee on Housing and Urban Development
United States Senate

September 14, 1993

Office of Thrift Supervision
1700 G Street NW
Washington DC 20552

09/10/93 16:21 09 202 6220073

TREAS EXEC SEC

0005/014
PAGE.003

SEP 9 '93 16:46

OTS Draft #5
9/9/93

Mr. Chairman and members of the Subcommittee, I am pleased to provide the Office of Thrift Supervision's (OTS) views on proposed bill S. 1405, "The National Flood Insurance Reform Act of 1993." Our remarks are limited to key provisions of the bill that directly affect the Federal financial regulatory agencies and their supervised institutions. Those provisions are primarily contained in Title II.

We support the broad-based goals of the National Flood Insurance Program ("NFIP"), which are to mitigate future flood damage through incentives for prudent flood plain management and to ensure that flood insurance is available at reasonable cost to owners of improved real property in special flood hazard areas. In addition, we support the concept of protecting property owners against potential losses, using an insurance mechanism that is funded primarily with premiums paid by those who benefit directly from such protection.

We also support the objective of S. 1405 to ensure that the NFIP combines predisaster mitigation efforts with an insurance and compliance program to reduce the physical and economic effects of flood-related damage on the Federal, State and local governments, and individuals.

Existing Regulatory Framework

The Flood Disaster Protection Act of 1973 (FDPA) directs the

OTS Draft #5
9/9/93

Federal financial regulatory agencies (the agencies) to issue regulations that prohibit supervised institutions from granting credit secured by improved real estate or a manufactured home located in an identified special flood hazard area unless the borrower satisfies certain flood insurance purchase requirements. Clearly, the success of this aspect of the NFIP is directly related to the level of compliance by lenders, including financial institutions, with these regulations.

OTS regulations implementing the FDPA are codified at 12 CFR 563.48. They closely track the statutory requirements and are substantially similar to those of the other agencies. However, OTS regulations additionally require that flood insurance be obtained for loans purchased by a savings association from other creditors. Our regulations require a savings association:

- o Not to make, increase, extend, purchase, or renew any loan secured by improved real estate or a mobile home located or to be located in a designated special flood hazard area (such loans) unless the property securing such loans is covered by flood insurance;
- o To maintain sufficient records to indicate the method used to determine whether such loans require flood insurance;
- o To provide written notification to the borrower within 10 days before closing that the property securing such loan is or will

OTS Draft #5
9/9/93

be located in a special flood hazard area (or, in lieu of providing notice, to obtain satisfactory written assurances that a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in a special flood hazard area);

- o To notify the borrower whether, in the event of damage to the property caused by flooding in a federally declared disaster area, Federal disaster relief assistance will be available for the property; and,
- o To require the borrower, prior to closing, to provide the association with a written acknowledgment that the property securing the loan is or will be located in a special flood hazard area and that the borrower has received the required notice regarding Federal disaster relief assistance.

Overview of the OTS Compliance Program

Compliance by savings associations with laws and regulations in general is a major goal of this agency. Our examination efforts pertaining to flood insurance are concentrated on ensuring full compliance by savings associations with the FDIA and our implementing regulations.

OTS Draft #5
9/9/93

The cornerstone of these efforts is our specialized compliance examination program. Under this program, compliance examinations are conducted by specially trained, career-professional staffs in our five Regional offices. Our compliance personnel receive in-depth training in the pertinent laws and regulations and our examination approach and philosophy. Flood insurance is covered in specific segments of our Compliance I (for entry-level compliance examiners) and Compliance II (for more experienced examiners) training schools. Incidentally, Federal Emergency Management Agency ("FEMA") provides a guest lecturer on flood insurance at our Compliance II school.

To enhance the effectiveness of our overall supervisory efforts, compliance examinations are conducted concurrently with safety and soundness examinations whenever practicable. However, we use a separate rating system to evaluate an association's compliance performance. The rating system triggers the frequency of subsequent examinations. Savings associations that receive satisfactory or outstanding compliance ratings are examined on a two-year cycle, while associations that exhibit various degrees of unsatisfactory performance are examined on either a one-year or six-month cycle. Our policies also permit more frequent examinations where warranted.

Specific Comments on S. 1405

Section 101 expands the coverage of the FDPA to include

09/10/93 16:22 202 6220073

TREAS EXPC SEC

008/014
PAGE.005

SEP 9 '93 16:50

OTS Draft #5
9/9/93

non-financial institution lenders and their appropriate regulatory agencies. This expansion creates a more level playing field among lenders and provides additional protections for non financial institution borrowers. However, the other affected federal agencies are in a better position to assess the impact that the proposed requirement may have on them or the industries they regulate.

Section 201(a) requires each "Federal entity for lending regulation" to consult with the Federal Financial Institutions Examination Council (FFIEC) prior to adopting any regulations to implement S. 1405. At the present time, the flood insurance regulations of the FFIEC member agencies are virtually identical. Moreover, the agencies use uniform examination procedures for determining compliance with the flood insurance requirements. We are confident that any revised regulations or procedures would continue to be coordinated on an interagency basis.

Section 202 directs each "Federal entity for lending regulation" to issue regulations that require a lender to escrow all charges for flood insurance if the lender also requires the escrowing of taxes, insurance premiums or other charges for loans secured by residential real estate or manufactured homes. This requirement may result in increased administrative costs for lenders, which may ultimately be passed on to borrowers. It may also lead to the inevitable debate as to whether borrowers should receive interest on escrow accounts.

OTS Draft #5
9/9/93

Section 203 directs the same Federal agencies to issue regulations that require lenders to notify borrowers of the special flood hazards and the need to purchase and maintain flood insurance. The required notice must include: (1) a warning that the property securing the loan is located in a special flood hazard area; (2) a description of the flood insurance purchase requirements; (3) a statement that flood insurance coverage may be purchased under the NFIP or be available from private insurers; and, (4) other information that the FEMA considers appropriate.

This proposed notice requirement is similar to our existing requirement, but is more extensive. We believe the additional specificity will be helpful to borrowers and avoid creating an unreasonable burden for lenders. Under our regulation, no notice is necessary if a savings association has obtained satisfactory written assurances a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in a special flood hazard area. The Subcommittee may wish to consider this type of exception.

Section 204 authorizes lenders to "forceplace" insurance on behalf of a borrower and to recover reasonable costs incurred in purchasing the insurance. We believe this requirement will help ensure that flood insurance coverage is purchased on properties in special flood hazard areas and will increase overall compliance

OTS Draft #5
9/9/93

with the National Flood Insurance Program, without adding excessive regulatory burden.

Section 206 amends Section 10 of the Federal Deposit Insurance Act (FDIA) to require that the flood insurance requirements be reviewed as part of each scheduled on-site examination. Under subsection (d)(1) of Section 10, the agencies are required to conduct annual safety and soundness examinations of certain institutions. However, consumer compliance examinations, which address flood insurance, are excluded from those requirements under subsection (d)(6).

Our compliance examination program ensures compliance by savings associations with the flood insurance purchase requirements. Our program emphasizes regulatory areas of greatest risk and sensitivity. It also concentrates on the role that the association's management should play in effectively administering its compliance responsibilities, including those related to the flood insurance requirements. Thus, our program enables us to allocate examiner resources to those institutions, and to areas within those institutions, that pose the greatest risk and supervisory concern. As indicated earlier, poorly performing institutions receive compliance examinations on an annual or more frequent basis. We believe our current examination approach provides us with the necessary flexibility to effectively exercise our supervisory responsibilities. Therefore, we prefer that the bill not contain a specific examination requirement for flood

ORS Draft #5
9/9/93

insurance.

If the proposed requirement to include a review of flood insurance compliance as part of each scheduled on-site examination remains intact, then on a more technical level we suggest language to clarify that this review be included within the scope of each scheduled on-site compliance examination. Section 10 of the FDIA distinguishes between safety and soundness and compliance examinations and we would prefer to continue to keep flood insurance as part of our compliance program.

Section 207 provides that a lender found to have a pattern or practice of flood insurance violations is to be assessed a civil money penalty of not more than \$350 for each violation, not to exceed \$100,000 per year. It also authorizes the agencies to take any necessary remedial action when a lender falls short of regulatory compliance and has not shown measurable improvement in compliance after the imposition of civil money penalties.

Our policy is to ensure that prompt, fair, and firm action is taken to correct violations of the laws and regulations we enforce. We already have a number of enforcement tools available ranging from moral suasion to formal enforcement actions, such as cease and desist orders. For example, we have specific authority under the Federal Deposit Insurance Act (12 USC 1818) to initiate an enforcement action for a violation of any law or regulation and the power to assess civil money penalties. Therefore, we believe

OTS Draft #5
9/9/93

our existing enforcement tools are sufficient to ensure compliance with the flood insurance requirements.

We also believe that supervisory enforcement of savings associations is most effective when we have discretion to determine which of the various remedies available to effect compliance is best suited to the institution. Therefore, we suggest that any penalty or corrective action provisions be discretionary, not mandatory.

Finally, the Subcommittee may wish to consider whether it would be appropriate to grant a private right of action to those persons who believe they have suffered harm as a result of actions taken or not taken in connection with the purchase of flood insurance.

Conclusion

This year's devastating floods in the Mississippi valley tragically serve as the most recent example of the need for an effective national flood insurance program. OTS is committed to fulfilling its responsibilities under the National Flood Insurance Program and to ensuring regulatory compliance by savings associations. We believe the program is beneficial to the thrift industry and the nation as a whole. We also believe compliance by the lending community demonstrates sound business practice as well as regulatory compliance.

09/10/93

16:28

OMB LRD/ESGG

013

09/10/93
SEP

16:28

09 202 6220073

TREAS EXEC SEC

014/014

PAGE.012

OTS Draft #5
9/9/93

We are always prepared to provide assistance to achieving the goals and objectives of the National Flood Insurance Program by continuing to work with Congress, our fellow Federal financial regulatory agencies and the thrift industry.

TESTIMONY**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503****13 page
TESTIMONY**

September 10, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1210

TO: Legislative Liaison Officer -

AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
ENERGY - Bob Rabben - (202)586-6718 - 209
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Francine Obermiller - (202)395-5036 - 242
EPA - Thomas C. Roberts - (202)260-5414 - 326
FEMA - Spence W. Perry - (202)646-4105 - 327
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Sonia Mathews - (202)456-6722 - 429
OSTP - Chris Clary - (202)456-7116 - 288
SBA - Christine Swedin - (202)205-6702 - 315
VA - Robert Coy - (202)535-8113 - 229
NCUA - Robert E. Loftus - (703)518-6330 - 280

FROM: JAMES J. JUKES (for) *James J. Jukes*
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: FEMA Proposed Testimony RE: S 1405, National
Flood Insurance Reform Act

DEADLINE: NOON September 13, 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Howard Paster
Greg Simon
Katie McGinty
C. Walden
Ken Ryder
Steve Redburn
Chris Heiser
Jim Jordan

Alan Rhinesmith
Ken Schwartz
Cora Beebe
Jeff Payne
Rob Fairweather
Bruce Beard
Paul Carey

STATEMENT
OF
JAMES L. WITT
DIRECTOR
FEDERAL EMERGENCY MANAGEMENT AGENCY
BEFORE THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
SEPTEMBER 14, 1993

Mr. Chairman, and members of the Subcommittee, it is my pleasure to appear before you today to discuss proposed changes to the National Flood Insurance Program (NFIP). I would request that my full statement be submitted for the record and I will summarize its contents in my oral statement.

This morning I would like to share with you my thoughts and goals as Director of FEMA, talk about some of our most recent experiences responding to the Midwest flooding and then discuss the specific changes being considered to the NFIP.

When I became Director of FEMA, I committed to the Congress, to the President and to the American people to rebuild and renew FEMA. Having served the people of Arkansas for over 16 years as a local official and as a State emergency services director, I saw what emergency management can do, how it can help people in times of disaster and, more important, how it can work with people to avoid disasters. It is these experiences upon which we are building a new FEMA.

I believe the mission of FEMA is simple. To reduce the loss of life and property from all types of hazards by providing the leadership and support for a comprehensive, all-hazards emergency management program which includes mitigation, preparedness, response and recovery. The cornerstone of this mission is mitigation.

I can think of no better way to serve people than to help them avoid becoming disaster victims. Reducing the risks faced by our people and our communities is the best job emergency management can accomplish.

Buildings, homes and schools that are built better and are sited out of harm's way, obviously withstand hazards better. This means less destruction, less personal and financial hardship, less tragedy. This also means less paying out of disaster assistance dollars by Federal State and local governments to rebuild our homes our businesses and our communities.

Right after I became Director of FEMA, I visited the area of Florida struck by Hurricane Andrew. I saw a community in which homes were constructed to meet building codes and virtually every home remained intact throughout Andrew.

A few short blocks away another community wasn't so lucky.

The heroic efforts of the people of the Midwest to save their homes from the rising flood waters, provided inspiration to all of us. But it also provides vivid evidence of the problems we face when we insist on challenging the forces of nature by our siting and building practices. These problems should be constantly kept in mind as we begin the long recovery and rebuilding process throughout the flooded Midwest.

The opportunity is at hand to significantly reduce the number of people at risk from flooding in the effected areas. Against the backdrop of the Great Midwest Floods of 1993, the time has come to make the hard political choices and to make the long term investment in mitigation.

For those responsible for making investments in mitigation - mayors, county commissioners, private companies, the political support often isn't there or the short term economic costs can't be justified. If we are to make a difference right now in the recovery of the Midwest, in the rebuilding of south Florida and in all of those States and localities at risk from floods or hurricanes or earthquakes, mitigation must become a National priority, and FEMA must lead the way.

We must begin to make mitigation worthwhile at the State and local level. When I say worthwhile, we must provide the rationale, the expertise and support - the fundamental incentives for mitigation to governments, the private sector and individuals. We must combine these incentives with full use of our existing authorities and programs.

We are taking a first major step in this direction through the new organization I am proposing for FEMA which was announced as part of the Administration's National Performance Review. We are establishing at FEMA, a Directorate for Mitigation, which will combine the three primary mitigation programs in FEMA; the

09/10/93 16:21

202 646 4536

FEMA/OGC

0000

4

National Earthquake Hazards Reduction Program (NEHRP), the Hazard Mitigation Grant program under our Disaster Relief Program and the flood plain management programs of the NFIP.

By taking this step, we will provide a concentrated focus to our efforts to work with State and local governments. It will also allow us to take advantage of the opportunities for implementing multi-hazard mitigation programs. For example, when we are working with communities on their flood plain management ordinances, we can encourage them to consider other hazards faced by their community. When a community or State applies for a hazard mitigation grant after a disaster, we should not only encourage but require that these projects are multi-hazard in nature.

Clearly the cornerstone of the Mitigation Directorate will be the flood plain management programs of the NFIP.

The NFIP is one of the most effective mitigation programs in the federal government. In its 25 year history, it has provided a solid example for integrating natural hazards insurance and mitigation, but I believe more can be done.

Mr. Chairman, I believe we share the same goals as the legislation, which is to place renewed emphasis on the NFIP and to use insurance as an incentive for mitigation. I intend to fully utilize the incentives embodied in the NFIP to accelerate

achievement of its risk reduction goals and I look at the legislation you are proposing , Senate bill 1405 as a significant step in strengthening this program. In this context I would like to share with you the Administration's thoughts on the proposed legislation.

There are a number of major issues which should be addressed in our efforts to improve the program. These include compliance with the flood insurance purchase requirements on lenders, mitigation grant programs, and the mapping of erosion areas. We have a number of questions and clarifications which have been transmitted to the Committee prior to this hearing, so I will keep my remarks focused on the major issues.

To summarize our position on the provisions of Senate Bill 1405, we strongly support the increased insurance purchase compliance requirements, although we feel that the current proposal could be strengthened. For example, by requiring flood insurance when federally regulated lending institutions purchase mortgage loans from unregulated lenders secured by properties in special flood hazard areas. We also strongly endorse the mitigation grant program to help communities establish plans for removal of structures from the floodplain, and to carry out those plans. Hurricane Andrew and the Midwest floods have again demonstrated that the most important step we can take is to help communities be prepared to move quickly following the floods to make sure their citizens do not suffer more in the future. Most

of the communities we deal with are small. They want to reduce the potential for destructive flooding, and desperately need this help.

We fully support Section Three of the Bill, which would give statutory recognition to the Community Rating System. Over 750 communities participate in this voluntary program which gives credits toward reducing flood insurance premiums in those communities exceeding the NFIP's minimum standards. This program has been extremely successful, and provides a solid link between floodplain management and insurance.

The Bill gives FEMA the authority to identify erosion hazard areas, which will then enable us to more effectively support communities in managing erosion hazard areas. This effort will necessarily begin with coastal erosion, with a study of the technical issues related to increasing our knowledge of riverine erosion. And the increased limits of coverage provided for in the bill are necessary to encourage insurance to value and increased premium reserves and to provide better coverage for small businesses.

Mr. Chairman, as you can see, we are very pleased with the vast majority of the bill's provisions. However, we do have some concerns in just a few areas.

In order for the NFIP to effectively protect individuals against the peril of flood, and to provide the leverage with communities to adopt and enforce the flood plain management requirements, the insurance must first be purchased. We all are painfully aware that despite the NFIP's efforts in educating thousands of agents and lenders each year, and spending nearly a million dollars annually for marketing and training activities, only about twenty percent of those nationwide who should have the coverage have actually purchased it. In the recent flooding disaster in the Midwest, that number might well be as low as ten percent.

The bill seeks to improve the program's insurance policy base by strengthening the requirements on lenders who are federally regulated or insured, and those federal agencies that insure or place mortgages in flood hazard areas, to obtain flood insurance when extending mortgage funding. We strongly support this effort. Increased compliance is critical in order to provide a greater spread of risk, and to support the new initiatives included in the bill. Without a significant increase in the policy base, the current policyholders who already fund all the NFIP's mitigation activities will have to pay for the additional mitigation, which will raise premiums in excess of \$50 per policy. We also strongly support the provisions of the bill which will mandate better coordination among the federal agencies in implementing the mandatory purchase requirements.

There are some omissions which will result in less than full compliance with the mandatory purchase provisions by covered lenders. For example, I am concerned there is no mention of refinancing of home loans, or any provision for review of existing mortgage portfolios, which have the effect of limiting the purchase requirements to loan origination. This would mean that portfolios of existing loans even at federally regulated lenders would still be at risk, unnecessarily exposing the U.S. Treasury to demands for financial disaster assistance in the future. However, we applaud those lenders who promote compliance through portfolio review. I believe these would be positive additions to the bill.

Improved compliance with the mandatory purchase provisions alone will not guarantee that everyone at risk will be covered by flood insurance. There is a large, and growing, segment of the mortgage market that is not regulated by the federal government. Combined with those who have paid off their mortgages, this means that many structures which should have this coverage will be outside the mandatory purchase provisions.

This conclusion was confirmed in the Midwest flooding. With the outstanding support of the Small Business Administration, FEMA staff recently reviewed approximately 2,000 applications for SBA loans arising from the Midwest floods. We found that over half of all applicants whose homes were located in the flood plain did not have a mortgage. Of those who did have mortgages,

about half were covered by flood insurance. This means that no matter how effective our compliance rules for regulated lenders become, we still have a lot of work ahead of us in educating people about the risk of flooding.

We enthusiastically support the provisions for mitigation insurance. As we speak, community officials and their constituents are agonizing over ways to remove substantially damaged structures in the wake of recent floods. This addition to the flood insurance coverage provided under the standard policy is critical to the success of their efforts in the future.

We also are concerned about the provision that would deny insurance in identified erosion hazard areas. While insurance denial may seem to be the simplest way to discourage development in these environmentally sensitive areas, we question how effective a deterrent this really is. Denying flood coverage does not reduce development, as we have seen with the Coastal Barrier Resources Act. There are numerous examples of barrier islands which have been heavily developed without the availability of flood insurance. Furthermore, should these islands be hit by a major disaster, considerable federal dollars could potentially be expended to provide disaster relief to the victims. The strength of the NFIP has always been the leverage in the agreement between the participating communities and the Federal government that communities would enforce sound land use management in exchange for the availability of flood insurance. Actuarial premiums charged in these areas, coupled with a

stronger mandatory purchase provision will help discourage unwise development.

In closing Mr. Chairman, I would like to say, each and every year, the National Flood Insurance Program saves over half a billion dollars because communities have adopted and enforced floodplain management requirements.

Structures built after communities join the NFIP suffer 83 percent less damage than those built before the standards are in place. And independent studies have shown that development in the floodplain is not encouraged by the existence of the flood program, but discouraged. One recent study indicated that as much as 78% of potential development is steered away from the floodplain simply because of the program's minimum standards.

These are just statistics to many people, Mr. Chairman, but to me they represent real people and communities who have been helped by this program.

I want to work closely with this Committee and I seek your support as we move forward together to rebuild FEMA, to strengthen the NFIP and to mitigate the risks being faced by our families, our businesses and our communities.

Mr. Chairman, I will be happy to answer any questions you and other members of the Committee may have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

October 12, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-754

TO: Legislative Liaison Officer -

TREASURY - Richard S. Carro - (202)622-1146 - 228
USTR - Fred Montgomery - (202)395-3475 - 223
CEA - Francine Obermiller - (202)395-5036 - 242
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
EPA - Thomas C. Roberts - (202)260-5414 - 326
ENERGY - Bob Rabben - (202)586-6718 - 209
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
NSC - William H. Itoh - (202)395-3723 - 249
STATE - Julia C. Norton - (202)647-4463 - 225
NEC - Sonia Mathews - (202)456-6722 - 429
AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
INTERIOR - Danny Consenstein - (202)208-6706 - 329

FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Annette ROONEY (395-7300)
Secretary's line (for simple responses): 395-6194
Karin KIZER (395-3947)

SUBJECT: HHS Proposed Testimony on North American Free
Trade Agreement (H. Agriculture 10/14)

DEADLINE: 3:30, Tuesday October 12, 1993

COMMENTS: If you do not respond by the deadline, we will
presume your agency has no comment.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

M. Weatherly/D.
Heath
M. Walsh
B. Tuccillo

H. Paster
L. Fernandez
K. MCGINTY

OCT-12-1993 10:07 FROM

TO

ASL/R MCCLUNG

P.02

OCT 12 1993

DRAFT

*Sent to the
Department
1*

**STATEMENT BY
GARY J. DYKSTRA
DEPUTY ASSOCIATE COMMISSIONER FOR REGULATORY AFFAIRS
FOOD AND DRUG ADMINISTRATION
PUBLIC HEALTH SERVICE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**BEFORE THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES**

OCTOBER 14, 1993

FOR RELEASE ONLY UPON DELIVERY

OCT-12-1993 10:07 FROM

TO

ASL/R MCCLUNG P.03

Mr. Chairman and members of the Committee:

I appreciate the opportunity to appear before your Committee again to discuss the Food and Drug Administration's (FDA) import enforcement procedures and how these procedures may be affected by the North American Trade Agreement (NAFTA). Accompanying me today is Mr. Leroy Gomez, Director of FDA's Southwest Region, Mr. Walter Batts, Director of FDA's International Affairs Staff, and Ms. Linda Horton, Acting Director of FDA's International Policy Staff.

As you know, the mission of FDA is to enforce the Federal Food, Drug, and Cosmetic (FDC) Act and other laws which are designed to protect consumers' health, safety, and pocketbook. These laws are intended to assure consumers that drugs and devices are safe and effective for their intended uses; that cosmetics are safe and made from appropriate ingredients; that all labeling and packaging is truthful and informative; and that foods are safe and wholesome and produced under sanitary conditions. These laws apply equally to domestic and imported products. Because NAFTA as drafted, ensures that each country will continue to be able to apply its health measures in a manner that fully achieves the country's chosen level of health protection, FDA would continue its present border enforcement activities if this agreement is approved. In other words, NAFTA will not change the way we do business.

OCT-12-1993 10:07 FROM

TO

ASL/R MCCLUNG P.04

- 2 -

Today, as you requested, I will discuss FDA's import program, our pesticide residue monitoring program, Mexican imports, FDA-Mexican government cooperative efforts, and FDA's role in NAFTA.

FDA's Import Program

Imported foods make up a substantial part of the average American diet: 25 to 40 percent of fruit and vegetables and 10 percent of the American diet overall is from imported foods. Over 75 percent of the imported products regulated by FDA are foods. Each year there are approximately 1.5 million entries into the United States.

While the legal requirements under the FDC Act are the same for imported and domestic products, the approaches used to assure conformity with these requirements are necessarily somewhat different. For example, the law takes into account the fact that FDA does not generally inspect foreign food producers by specifying that food imports may be detained (i.e., not distributed in domestic commerce) when the food merely "appears to be" in violation of the Act. In the case of domestically produced foods, where we have clear-cut authority to inspect manufacturing processes and conduct inspection both routinely and for cause, the Agency must establish in an enforcement action that the food is adulterated, misbranded or otherwise violates the Act.

OCT-12-1993 10:08 FROM

TO

ASL/R MCCLUNG P.05

- 3 -

Our inspection and enforcement procedures for imports rely on coordination with the U.S. Customs Service with whom we have an excellent working relationship. Imported products including those regulated by FDA, are subject at the time of entry to inspection by U.S. Customs. FDA is notified of shipments and makes the decision whether to sample or take other appropriate actions. Shipments found not to comply with U.S. laws and regulations may be detained until they are brought into compliance with those laws and regulations. If such goods cannot be brought into compliance, they must be destroyed or re-exported.

Over the years, FDA has made procedural innovations to increase import surveillance efficiency. These approaches are designed to provide wider, more effective and uniform review of goods offered for entry and to help speed the release of imports, and, of course, to give American consumers better protection from products that are adulterated or misbranded, or otherwise do not comply with the FDC Act. I would like to explain one of these approaches that has particular relevance to the main subject of today's hearing.

Besides having the authority to refuse entry to an individual shipment of a violative import, FDA may invoke automatic detention when there is reason to believe that a particular violation may be repeated. Under this control measure, all

OCT-12-1993 12:08 FROM

TO

ASL/R MCCLUNG P.06

- 4 -

subsequent shipments of the suspect product are automatically detained (not distributed in domestic commerce) until either the importer, shipper, producer, or a responsible agency of the exporting country, certifies to FDA's satisfaction that the shipment complies with the applicable U.S. law.

Automatic detention and related certification means, for example, that if a pesticide residue for which there is no U.S. tolerance was found in an imported food all subsequent shipments of the same product from that shipper would be detained automatically unless accompanied by a certificate of analysis showing that the illegal residue is not present. FDA conducts audits or spot checks of these certified shipments (by collecting and analyzing samples of the food) to ensure that the certificates are valid. If no certificate accompanies a shipment, the shipment will be refused entry without FDA sampling or testing. It is FDA's policy to implement automatic detention for an individual shipper after a single violation and to continue this automatic detention until the shipper can prove to FDA that the illegal residue problem has been corrected, or until the end of the growing season.

Occasionally, FDA places products from an entire country or region of a country on automatic detention when the violative conditions appear to be geographically widespread. Automatic

OCT-12-1993 10:08 FROM

TO

ASL/R MCCLUNG

P.07

- 5 -

detentions of this breadth are rare, and are initiated after other avenues for resolving the problem have been exhausted.

Pesticide Residue Monitoring Program

Let us now turn to how FDA carries out its enforcement responsibilities for pesticide residues on foods. As you know, the Environmental Protection Agency (EPA) is responsible for registering pesticides for use in the United States. EPA also has the responsibility to establish limits, or tolerances, for pesticide residues in both raw agricultural commodities and processed foods; these tolerances apply to both imported and domestically grown foods. EPA-established tolerances are commodity specific and represent the maximum amount of pesticide residue that may legally remain in food. In the absence of a tolerance, any level of pesticide residue is ~~per se~~ illegal. FDA is responsible for enforcing these tolerances and for determining whether an imported food violates the FDC Act.

Each year, FDA develops and implements a national plan for sampling imported food and domestically produced food, for pesticide residues. The national plan is a compilation of individual plans developed by each FDA district office and is reviewed by FDA headquarters staff to ensure the most comprehensive national coverage. FDA headquarters also monitors

- 6 -

the plan's progress and, where indicated, redirects field sampling activities.

FDA collects regulatory samples early in the marketing chain to afford the greatest opportunity for determining the source of illegal residues (e.g., the grower involved). This system prevents the flow of further shipments that may contain the same residues. Thus, for imported foods, we collect samples directly at the port of entry. FDA sampled shipments are not allowed to be marketed until the results of the FDA testing are known and the shipments are released by the agency.

FDA's sampling strategy is based on the volume of foods entered at various ports, and on whether foods presented previous problems, assuring as comprehensive monitoring as possible with available resources. This strategy emphasizes scrutiny of products from countries with a high volume of produce exported to the United States and commodities that have a history of residue violations.

FDA analyzes samples using multiresidue methods that can detect and measure residues of a large number of the pesticides used in the United States and in other countries. The Agency's methodology and the range of pesticides covered are continually being expanded. Still, although multiresidue methods can detect many of the pesticides commonly used worldwide, there are

OCT-12-1993 10:09 FROM

TO

ASL/R MCCLUNG P.09

- 7 -

pesticides that cannot be detected by these methods. To complement multi-residue methods, FDA uses single-residue methods to monitor for a number of other pesticides. Because single-residue methods are less cost efficient, they are used on a selective basis.

Our sampling approach emphasizes fresh agricultural commodities over processed foods, because this increases the likelihood of finding the violation and tracing it to the grower. However, processed foods are included selectively in the sampling program. In addition, FDA's district offices conduct surveys of certain basic food items, such as milk and milk products, eggs, and fish, and special surveys of selected pesticide/food combinations of current interest.

When illegal pesticide residues are found in an imported food shipment, the shipment is refused entry and required to be destroyed or shipped out of the United States. As already mentioned, FDA may also invoke automatic detention of subsequent, related shipments.

In 1992, FDA collected and analyzed a total of 16,428 food samples for pesticide residues under its regulatory monitoring programs. Of these, 8,651 samples, or 53 percent, were samples of imported foods from 94 countries. Overall, no violative residues were found in nearly 96 percent of the import

OCT-12-1993 10:10 FROM

TO

ASL/R MCCLUNG P.10

- 8 -

surveillance samples, and 66 percent had no detectable residues at all. Less than 1 percent of the import samples had pesticide residues that exceeded EPA tolerances, a finding that is about the same as the percentage of domestic samples that exceeded tolerance. Approximately 3 percent of import samples were found to contain residues of pesticides for which there is no established U.S. tolerance. The majority of these violations involved residues of pesticides that have U.S. tolerances, but not for the particular commodity in which the residue was found.

Imports From Mexico

As your know, a large volume of fresh produce enters the United States from Mexico, especially during the winter. In 1992, 32 percent (versus 25 percent in 1991) of imported foods sampled by FDA for pesticide residue analysis were imports from Mexico. Essentially all this work on Mexican produce is conducted by FDA's Dallas and Los Angeles district offices. In 1992, the violation rate for Mexican produce, with illegal pesticide residues, was comparable to that of produce from other countries--3.8 percent. Also, we have found that as with other countries, most of the residue violations in Mexican produce are residues of pesticides that are registered in the United States, but not for use on the food crop in which the residue is detected. There were 52 automatic detentions invoked for imported Mexican produce in 1992.

- OCT-12-1993 10:10 FROM

TO

ASL/R MOOLUNG P.11

- 9 -

Currently, FDA works with the Mexican government as a partner in our efforts to reduce the likelihood that violative residues will appear on foods imported from Mexico. We consider our relations and communications with Mexico to be excellent. We have worked with the Mexican government and Mexico's agricultural and pesticide industries to exchange information on FDA's regulatory system, the results of our monitoring, and, of course, on how to comply with U.S. pesticide tolerances. We have an annual bilateral meeting with Mexico's Ministry of Health and have developed a jointly agreed workplan for technical cooperation on a variety of issues. We also have routine "Border Conferences" with Mexican government officials to discuss matters of mutual interest. As a practical matter, we talk to them informally on a daily basis to address border issues of concern. We are striving to lower the number of violative Mexican products imported to the U.S. by helping their food producers keep abreast of U.S. tolerance requirements, among other things.

In 1988, FDA entered into a Memorandum of Understanding (MOU) with the Mexican Ministry of Agriculture regarding various cooperative programs. The MOU addresses technical cooperation in the area of pesticide use and monitoring and establishes avenues of communication between the designated regulatory units of both countries. Under the MOU, we are also working with the Mexican government to assist in Mexico's laboratory testing programs and

OCT-12-1993 10:10 FROM

TO

ASL/R MCCLUNG

P.12

- 10 -

to solve problems arising from illegal pesticide residues on Mexican produce.

U.S.-Mexico Pesticide Project

Related to the latter concern is a project that FDA in cooperation with EPA formally initiated several years ago that is aimed at establishing tolerances for pesticides that are important to Mexico's agriculture. Under the project, Mexico has identified about 40 pesticide-food combinations as candidates for tolerances in the United States. EPA is examining the list to identify possible alternative pest control practices or alternative pesticides that already have U.S. tolerances for the particular food commodity which might be effective for controlling the particular pest.

For the chemicals on this so-called critical list where suitable alternative may not exist, EPA will also indicate the likelihood of obtaining tolerances. Pesticides that already have tolerances in the United States for other food uses, may represent the best candidates for additional tolerances, provided no risk concerns have been raised.

Once the list of critical pesticides-crop combinations has been refined, Mexico would begin working with the manufacturers of the pesticides to develop the data necessary to support tolerances

OCT-12-1993 10:11 FROM

TO

ASL/R MCCLUNG P.13

- 11 -

which would be submitted in the form of tolerance petitions for EPA evaluation under its normal procedures.

This project will take time, but in the long-term, we believe it will prove to be an effective way to further assure the safety of imported Mexican produce. It also demonstrates Mexico's commitment to assure its pesticide uses are consistent with U.S. requirements. Finally, the project shows the spirit of cooperation that characterizes our working relationship with Mexico in recent years.

FDA Role In NAFTA

Since so much of the trade between the United States, Canada, and Mexico is in goods regulated by FDA, the Agency was engaged actively in negotiations of NAFTA. As you are aware, from the beginning the federal government has been committed to negotiating an agreement that would not compromise the protection of American health, safety, or the environment. To this end, we were directly involved in to the development of Chapter 7 (Sanitary and Phytosanitary Measures) as well as Chapter 9 (Standards-Related Measures/Technical Barriers to Trade). We are satisfied that both these portions of NAFTA would in no way prevent FDA from carrying out its regulatory activities, or compromise our laws and regulations to protect the public health. In fact, the agreement has explicit provisions to allow each

OCT-12-1993 10:11 FROM

TO

ASL/R MCCLUNG

P.14

- 12 -

country to set standards that each believes are appropriate and ones more stringent than international standards. It also maintains approval systems that prevent products from being marketed until the appropriate approvals are obtained.

Under NAFTA, FDA would continue the Agency's import program for Mexican products as it has in the past. We consider public health and consumer protection to be the bottom line. We can assure you, Mr. Chairman, there will be no relaxation from the requirements of the FDC Act for any FDA regulated product imported into the U.S. from Mexico. Indeed we have found that the United States-Canada Free Trade Agreement, has not changed our border enforcement activities.

We understand that there is speculation that the volume of FDA-regulated products imported from Mexico may increase significantly under NAFTA and this may overwhelm FDA's ability to assure violative product does not enter the United States. For some time, however, FDA has been expanding its import program through a number of means to enable us to handle increased numbers of entries. In the near future, we will have in place a computer system that will provide more immediate data on products being imported. This will enable us to better track import trends and allocate resources where we need them most. In addition, we are developing country profiles to identify each country's strengths, weaknesses and infrastructures; we are

OCT-12-1993 10:12 FROM

TO

ASL/R MCCLUNG

P.15

- 13 -

surveying specific commodities for specific problems; we are conducting surveillance with state and federal agencies; we are educating industry, trade groups, and consumers; we are providing technical assistance to foreign governments; and we are expanding our foreign inspection program. We believe all of these efforts are making our import program more efficient and capable of handling increasing numbers of imports.

Having NAFTA in place could benefit our border enforcement activities. NAFTA is expected to stimulate higher levels of commitment by Mexico to solve regulatory problems than would occur under the no-NAFTA scenario. Moreover, it would encourage systems and criteria similar to those established in the United States, which will help ensure the safety, quality and effectiveness of FDA-regulated products. These cooperative efforts with Mexico should assist the Mexican government to strengthen their infrastructure standards for development, conformity assessment procedures (e.g. analyzing export products for illegal pesticide residues), and enforcement efforts. In the long term, this would benefit United States' consumers by providing added assurance that products imported from Mexico meet U.S. standards.

Although we are already working extensively with Mexico to assure that its products meet our standards, NAFTA would require that we exchange proposed regulations and standards in advance and

OCT-12-1993 10:12 FROM

TO

ASL/R MCCLUNG

P.16

- 14 -

conduct technical cooperation as may be mutually agreed. These consultations, by solving technical problems before they occur at the border, may eventually save us resources as we have experienced with the U.S.-Canadian Free Trade Agreement by allowing us to redirect monitoring to countries with higher pesticide violation rates.

We understand, Mr. Chairman, that you would like to see within NAFTA a committee which would specifically handle pesticide issues. We believe we already have mechanisms in place to handle these issues. We, however, would not be opposed to such a committee and will work with the Office of the U.S. Trade Representative, as appropriate, on this proposal.

In summary, NAFTA was drafted to safeguard the ability of governments to ensure food safety. FDA intends to continue the Agency's border enforcement activities under NAFTA. As I indicated, the United States government, FDA and EPA in particular, has a number of initiatives underway to assure the safety of Mexican imports. We believe that NAFTA will enhance these activities.

Mr. Chairman, this concludes my formal testimony. My colleagues and I will be glad to respond to any questions you may have.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

August 5, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1024

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3086 - 324
ENERGY - Bob Rabben - (202)586-6718 - 209
STATE - Julie C. Norton - (202)647-2137 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228
AID - Robert M. Lester - (202)647-8371 - 202
EPA - Thomas C. Roberts - (202)260-5414 - 326
NEC - Sonia Mathews - (202)456-6722 - 429
OSTP - Susanne Bachtel - (202)456-7116 - 288
USTR - Fred Montgomery - (202)395-3475 - 223
EX-IM - Ira Fishman - (202)566-8806 - 236
OPIC - Richard C. Horanburg - (202)336-8417 - 221
NSC - William H. Itoh - (202)395-3723 - 249

FROM: JAMES J. JUKES (for) *Ji-*
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: PEACE CORPS Proposed Report RE: HR 2112,
National Environmental Trade Development Act

DEADLINE: NOON August 12, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

~~Howard Paster~~
~~Katie McGinty~~
Jeff Payne
Louisa Koch
Mark Kramer
Mark Sandy
Alice McNutt Miller

Peace Corps

Honorable Lee H. Hamilton
Chairman
Committee on Foreign Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

I am pleased to respond to your request for the views of the Peace Corps on H.R. 2112, the proposed "National Environmental Trade Development Act of 1993". The Peace Corps' comments are limited to section 8 and section 10(2) of the bill as they are the only provisions that relate directly to the Peace Corps.

Section 8 of the bill would amend the Peace Corps Act so as to establish within the Peace Corps a division known as the "Senior Environmental Service Corps". The purpose of this division would be to provide volunteers with experience in environmental management, environmental technology (including marine biotechnology), sustainable development, coastal zone management, or marine pollution and prevention to countries that request volunteers with such skills. Volunteers serving in the Senior Environmental Service Corps would be mandated to provide advice to foreign governments, ministries, for-profit and non-profit entities, and others in environmental management, strategies, and practices. Volunteers in the Senior Environmental Service Corps would be enrolled in the same manner and serve under the same terms and conditions of service as all other Peace Corps volunteers except that volunteers in the Senior Environmental Service Corps would be authorized to be provided with stipends sufficient to enable them to fulfill their advisory function. Section 10(2) would authorize appropriations to the Director

of the Peace Corps of \$1.5 million in each of fiscal years 1994 through 1998 to carry out section 8 of the bill, and funds appropriated pursuant to that authorization would remain available for two fiscal years.

While the Peace Corps is fully supportive of the apparent goals underlying this proposal, we believe that a statutory mandate to establish a separate division and a distinct cadre of volunteers within the Peace Corps would contravene longstanding principles and policies relating to Peace Corps programming and volunteer service. Thus, we regret that the Peace Corps cannot support enactment of section 8 and section 10(2).

The Peace Corps' environmental programs have been an integral part of the agency's activities from the onset of operations in the early 1960s, and we are fully supportive of efforts to strengthen our programs and enhance volunteers' technical skills and effectiveness in this area. Since 1980, when the Environmental Sector was established within the Office of Training and Program Support, the Peace Corps has coordinated the various programmatic initiatives in environmental fields and has developed highly successful models through which technical assistance may be provided in a manner consistent with the people-to-people nature of all Peace Corps programs. In recent years, the traditional programs of parks and wildlife management, forestry, nursery management, and soil conservation have been expanded, while new initiatives have been launched to address needs in the areas of waste management and marine and coastal management. Volunteers also work with, and assist in the development of, nongovernmental organizations whose missions relate to environmental issues.

The growth of the Peace Corps' Environmental Sector programs reflects the increased attention to, and emphasis

on, environmental concerns on the part of host countries. Consistent with longstanding Peace Corps policy, the Peace Corps' programs in this and all other technical areas are driven by the needs and requests from the countries in which Volunteers serve. The number of Volunteers working in Environmental Sector projects has increased from fewer than 300 in 1986 to approximately 800 currently. The Peace Corps' environmental Volunteers comprise an environmental work force that is among the largest of any organization involved in international development work.

In light of Peace Corps' policy of responding to requests for assistance, rather than determining independently what type of assistance will be provided, the statutory mandates that would be imposed by this legislation would mark a sharp departure from our traditional practices. The Senior Environmental Service Corps would be established upon enactment with a distinct mission of narrow technical focus and would be comprised of only highly experienced individuals. Although the legislation attempts to maintain the element of responsiveness by providing that the purpose of the Senior Volunteer Service Corps would be to provide specially skilled environmental volunteers to countries that request them, the new division would be established irrespective of any indication of unfilled requests or demonstrated demand for such Volunteers.

Over 32 years of experience teaches that the flexibility afforded the Peace Corps in programmatic matters allows the Peace Corps to fashion programs that are most responsive to host countries' requests and serves the best interests of appropriate and timely programming. Moreover, the technical aspects of Peace Corps' programming and the types of assistance provided are never the sole emphasis in our efforts. Section 2(a) of the Peace Corps Act establishes as co-equal purposes of the Peace Corps the provision of

technical assistance to interested countries and the promotion of better understanding of the American people on the part of the people served and a better understanding of the peoples served on the part of Americans. These cross-cultural purposes of the Peace Corps underlie and strongly influence all Peace Corps programmatic initiatives.

The Peace Corps has learned through experience that the two-year commitment made by volunteers and the requirement that they develop adequate language and cross-cultural skills are key ingredients to successful programs. These characteristics of Peace Corps volunteers have been particularly important in fostering and maintaining a strong positive image of the program in our host countries, some of which have hosted volunteers for over 30 years and continue to request more volunteers than we are able to provide.

The amendments to the Peace Corps Act that would be made by section 8 would establish, for the first time, a statutory emphasis on one type of technical assistance. The provisions would elevate volunteers working in the newly established Senior Environmental Service Corps to a status above that of other Peace Corps volunteers. Volunteers serving in the Senior Environmental Service Corps would be authorized to receive a stipend in addition to the standard living allowance provided to all volunteers. The authority to provide additional remuneration to these volunteers is intended to be a recruiting tool that would allow the Peace Corps, if necessary, to provide more generous financial incentives to individuals with specialized environmental experience.

The Peace Corps believes that the effect of these statutory modifications and the assignment of "senior" status to certain Volunteers would be to diminish the perceived value of other volunteers working in Environmental Sector

programs who are not members of the distinct "senior" corps, as well as those working in other program areas on which Congress would not have placed a special emphasis. Moreover, we believe the payment of special stipends only to individuals with environmental experience would set an unwise precedent with respect to the recruitment of Volunteers with scarce skills. Obviously, increasing the financial incentives for Volunteer service could assist in attracting highly trained professionals in environmental fields, as well as in such fields as medicine or agronomy for which there are often unfilled requests and significant needs among our host countries. However, we believe that such efforts to "professionalize" the Peace Corps through the offering of increased financial incentives would be inappropriate.

In accordance with the cross-cultural purposes and people-to-people nature of the Peace Corps, volunteers are expected to live among, and at the same basic standard of living as, the people with whom they work and whom they serve. The Peace Corps recognizes the difficulty in attracting seasoned professionals for whom volunteer service would cause significant financial sacrifice in the form of foregone income. However, the Peace Corps believes that it would be inconsistent with the agency's fundamental character as a volunteer organization and its mission, which involves in equal parts technical assistance and the promotion of cross-cultural understanding, to initiate a policy of providing increased financial incentives to those whose technical skills are desired. Such a change would not only signal that the Peace Corps values technical skills above cross-cultural ones but also that one type of technical expertise is valued above all others. The Peace Corps recognizes the extreme importance of environmental issues to all the peoples of the world, yet we believe that the proposed modifications to the Peace Corps Act would not

assist, and in fact would hamper, the agency's ability to continue its leading work on the grass-roots level.

The Peace Corps' efforts to recruit scarce-skills volunteers involves the development of close ties with professional and trade associations, academic institutions, and the broad dissemination of information about the technical needs of host countries. The primary emphases of our recruitment efforts are the opportunity to serve, the need for qualified individuals to provide assistance throughout the countries we serve, and the personal and professional benefits such as developing foreign language ability and gaining international work experience. We believe that these emphases appropriately reflect the character of the Peace Corps as a volunteer agency and provide the American people with an accurate picture of the agency's mission, as established by the Congress in the Peace Corps Act.

Thank you again for the opportunity to express the views of the Peace Corps on this proposal. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of these views on H.R. 2112 to the Committee.

With best wishes,

Sincerely,

John P. Hogan
Acting Director

LEE H. HAMILTON, Indiana
Chairman

BENJAMIN A. GILMAN, New York
Ranking Republican Member

One Hundred Third Congress
Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

July 9, 1993

RAM GELBERMAN, Connecticut
TOM LANTOS, California
ROBERT G. TORRICELLI, New Jersey
HOWARD L. BERMAN, California
GARY L. ACKERMAN, New York
HARRY JOHNSON, Florida
RUST L. BIRNBAUM, New York
SIR F. M. PALOMOYANGA, American Samoa
JAMES L. GOSNEY, Minnesota
CHARLES E. SCHUMER, New York
MATTHEW S. MARTINEZ, California
ROBERT A. ROSEN, Pennsylvania
RONALD M. FAYNE, New Jersey
ROBERT E. ANDERSON, New Jersey
ROBERT MENENDEZ, New Jersey
SHERRILL BROWN, Ohio
CYNTHIA A. MCCORMY, Georgia
MARIA CANTWELL, Washington
ALICE L. HASTINGS, Florida
ERIC RINGENBULT, Ohio
PETER DEUTSCH, Florida
ALBERT RUSSELL WYNN, Maryland
DON SCHWABE, California
FRANK MCCLOSKEY, Indiana
THOMAS C. SAWYER, Ohio
(Nagasaki)

MICHAEL N. VAN DUSEN
Chief of Staff

WILLIAM F. GOODLING, Pennsylvania
JIM LEACH, Iowa
TOBY ROTH, Wisconsin
OLYMPIA J. SNOWE, Maine
HENRY J. HYDE, Illinois
DOUG SCHULTZ, Michigan
CHRISTOPHER M. SMITH, New Jersey
BAM BURNETT, Indiana
JAN MEYERS, Kansas
ELTON GALLEGLY, California
JESSIE ROSENTHAL, Florida
CASS BALLINGER, North Carolina
DANA SCHWABACH, California
DAVID LEVY, New York
DONALD A. MANUELLO, Illinois
LINCOLN DIAZ-BALART, Florida
EDWARD R. ROYCE, California

RICHARD J. CARON
Republican Chief of Staff

Mr. John P. Hogan
Acting Director
The Peace Corps
806 Connecticut Avenue, N.W.
Washington, D.C. 20526

Dear Mr. Hogan:

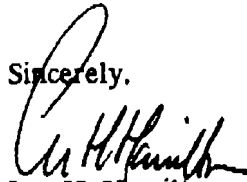
The Committee would appreciate receiving the views of the Peace Corps on the following measure:

H.R. 2112 (Studds) – To provide for the development and implementation of a national strategy to encourage and promote opportunities for the United States private sector to provide environmentally sound technology (including marine biotechnology), goods, and services to the global market, and for other purposes.

A copy of the measure is enclosed for your convenient reference. Please direct the Peace Corps response to me, with the envelope directed to the attention of Catherine L. Zimmer, Legislative Information Coordinator, Committee on Foreign Affairs.

With best regards,

Sincerely,


Lee H. Hamilton
Chairman

LHH/CLZ
Enclosure

I

103D CONGRESS
1ST SESSION

H. R. 2112

To provide for the development and implementation of a national strategy to encourage and promote opportunities for the United States private sector to provide environmentally sound technology (including marine biotechnology), goods, and services to the global market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1993

Mr. STUDDS (for himself, Ms. FURSE, Mr. OLVER, Mr. KENNEDY, Mr. LAUGHLIN, Mrs. UNSOELD, Mr. MANTON, Mr. HUGHES, Mr. LANCASTER, Ms. ESHOO, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and Merchant Marine and Fisheries

A BILL

To provide for the development and implementation of a national strategy to encourage and promote opportunities for the United States private sector to provide environmentally sound technology (including marine biotechnology), goods, and services to the global market, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

15

1 zone management, sustainable development,
2 marine pollution prevention and response, ma-
3 rine biotechnology, and environmental business
4 management; and

5 (D) to perform other services to promote
6 the export of United States environmental tech-
7 nology (including marine biotechnology), goods,
8 and services.

9 (3) TERMS OF GRANTS.—Each grant under this
10 subsection may be awarded for an initial period of
11 not more than 3 years and may be renewed for one
12 additional period of not more than 2 years. Each
13 such grant may not at any time exceed 50 percent
14 of the operating costs of the recipient Regional Envi-
15 ronmental Business and Technology Cooperation
16 Center and shall be matched by financial and
17 in-kind contributions of the Center.

18 (4) LIMITATION IN NUMBER OF GRANTS.—The
19 Secretary is authorized to make grants under this
20 section to not more than 6 Regional Environmental
21 Business and Technology Cooperation Centers.

22 **SEC. 8. SENIOR ENVIRONMENTAL SERVICE CORPS.**

23 The Peace Corps Act (22 U.S.C. 2501–2523) is
24 amended by adding at the end the following:

1 **"SEC. 29. SENIOR ENVIRONMENTAL SERVICE CORPS.**

2 **"(a) ESTABLISHMENT OF SENIOR ENVIRONMENTAL**
3 **SERVICE CORPS.—**There is established within the Peace
4 Corps a division known as the 'Senior Environmental
5 Service Corps'.

6 **"(b) PURPOSE.—**The purpose of the Senior Environ-
7 mental Service Corps is to provide volunteers with experi-
8 ence in environmental management, environmental tech-
9 nology (including marine biotechnology), sustainable de-
10 velopment, coastal zone management, or marine pollution
11 and prevention, to countries requesting volunteers with
12 these skills.

13 **"(c) DUTIES AND RESPONSIBILITIES.—**Volunteers in
14 the Senior Environmental Service Corps shall provide ad-
15 vice to foreign governments, ministries, for-profit and non-
16 profit organizations, and others in environmental manage-
17 ment, strategies, and practices.

18 **"(d) TERMS AND CONDITIONS OF SERVICE.—**The
19 President shall enroll volunteers in the Senior Environ-
20 mental Service Corps in the same manner and under the
21 same terms and conditions of service as other volunteers
22 are enrolled under section 5 of this Act, except that volun-
23 teers in the Senior Environmental Service Corps may be
24 provided with stipends sufficient to enable them to fulfill
25 the functions described in subsection (c) of this section."

17

1 SEC. 9. AMERICAN BUSINESS CENTERS.

2 (a) ESTABLISHMENT.—The Secretary is authorized
3 and encouraged to establish American Business Centers,
4 including Environmental Business Centers, in such coun-
5 tries that the Secretary determines offer promising new
6 market possibilities for the export of United States envi-
7 ronmental technology (including marine biotechnology),
8 goods and services. To the maximum extent practicable,
9 the Secretary shall use the private sector to establish such
10 Centers.

11 (b) POLICY GUIDANCE.—To the extent consistent
12 with the policy and purposes of this Act, the Secretary
13 shall comply with the directives set forth in paragraphs
14 (1), (2), (3), (4), and (6) of section 301(e) of the Freedom
15 Support Act of 1992 (22 U.S.C. 5821) in establishing
16 American Business Centers and Environmental Business
17 Centers under this section.

18 SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

19 There are authorized to be appropriated—

20 (1) to the Secretary of Commerce—

21 (A) \$4,000,000 for each of fiscal years
22 1994, 1995, 1996, 1997, and 1998, to carry
23 out sections 5, 6, and 9; and

24 (B) \$6,000,000 for each of fiscal years
25 1994, 1995, 1996, 1997, and 1998, to carry
26 out section 7; and

18

1 (2) to the Director of the Peace Corps
2 \$1,500,000 for each of fiscal years 1994, 1995,
3 1996, 1997, and 1998 to carry out section 8.
4 Sums appropriated pursuant to paragraph (2) shall re-
5 main available for 2 fiscal years.

6 **SEC. 11. DEFINITIONS.**

7 As used in this Act—

8 (1) the term "export promotion program"
9 means any activity of the Federal Government de-
10 signed to stimulate or assist United States busi-
11 nesses in marketing their goods and services, includ-
12 ing environmental technology, abroad;

13 (2) the term "Secretary" means the Secretary
14 of Commerce, and

15 (3) the term "State" means each of the several
16 States, the District of Columbia, and any common-
17 wealth, territory, or possession of the United States.

O

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

May 10, 1993

12 pgs

LEGISLATIVE REFERRAL MEMORANDUMLRM #D-207
DRAFT #204

TO: Legislative Liaison Officer -

EDUCATION - John Kristy - (202)401-2670 - 207
HHS - Frances White - (202)690-7760 - 328
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
TREASURY - Richard S. Carro - (202)622-1146 - 228
NEC - Sonia Mathews - (202)456-6722 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
ACTION - Stewart A. Davis - (202)606-4833 - 244
INTERIOR - Ralph Hill - (202)208-6706 - 329

FROM:

JANET R. FORSGREN (for) *Janet R. Forsgren*
Assistant Director for Legislative Reference

OMB CONTACT: Chris MUSTAIN (395-3923)
Secretary's line (for simple responses): 395-7362

SUBJECT: CNCS Proposed Testimony on ONS Draft Bill
National Service Trust Act of 1993

DEADLINE: TODAY 3:00 PM May 10, 1993

COMMENTS: The attached testimony will be delivered tomorrow, May 11th, before the Senate Labor and Human Resources Committee.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Barbara Selfridge
Larry Matlack
Pam Van Wie
Barry White
Pat Smith
Bob Rideout
Ray Kogut
Steve Semenuk

Bill Galston
Jack Lew
Greg Simon
Jim Kohlenberger
Pam McElwee
Delphine Motley
Janet Forsgren

DRAFT

TESTIMONY OF CATHERINE MILTON
EXECUTIVE DIRECTOR
COMMISSION ON NATIONAL AND COMMUNITY SERVICE
COMMITTEE ON LABOR AND HUMAN RESOURCES
MAY 11, 1993

I am honored to appear before you today to testify on behalf of the Commission on National and Community Service on the National Service Trust Act of 1993. The Commission is an independent, bipartisan federal agency created by the National and Community Service Act of 1990 to support and enhance national and community service. As you consider this new, landmark legislation, I want to share with you the perspective, expertise, and insights gained by our Commission over the last year and a half in this specialized field.

In order to effectively meet the mandate issued by this committee to renew the ethic of service across the country, the Commission had to craft and implement a strategic vision that would weave service into the fabric of every American's life. The Commission's members were unanimous in their belief, based on personal experience and buttressed by the experience of the Commission's programs to date, that service is a powerful tool to build character, change attitudes for the better, and instill a sense of community in the participants and the recipients of service. In its early planning, the Commission identified three strategic directions: to encourage model programs; to stimulate the development of needed infrastructure; and to contribute to visionary, coalition-building leadership in the field. The Commission has made tremendous strides in each of its strategic directions.

With approximately \$150 million appropriated by Congress for fiscal years 1992 and 1993, the Commission has funded, assisted and evaluated over

(150) new and existing community service projects in nearly every state - from school and campus-based part-time service-learning programs to full-time service in youth and conservation corps to the development of eight national service demonstration models.

The Commission funds service programs along a continuum of both time commitment and age -- full-time and part-time programs, programs which involved children in grades K-12 and those for senior citizens. Following are examples of the kinds of programs which illustrate the reach of service:

Topeka, Kansas: The Kansas Office for Community Service received an operating grant and has made subgrants to six school districts and three community-based groups to implement community service programs. For example, El Centro is a well-established community center in Kansas City that is expanding its established youth academic enrichment programs. With the Commission funds, the center will begin a program called "Students as Teachers" where 100 high school students will, on a one-to-one basis, tutor children from the local public schools. Several of the school districts receiving grants are recruiting thousands of students into service, with youths with disabilities making up close to ten percent of that total.

New Haven, Connecticut: Southern Connecticut State University will expand a mentoring project that pairs minority students at the university with a group of 14-18 year old minority youth who are at risk of dropping out of school. Mentors make a two-year commitment to their young people, providing both academic assistance and a supportive, personal

2

relationship. Students are recruited from a variety of majors and will participate in a specially-designed mentoring course.

Duluth, Minnesota: At Arrowhead Community College over 135 students serve as mentors and tutors in the local tribal school and an adult learning center. Courses related to literacy and the needs of local youth are also being developed through the departments of Multicultural Students, Human Services, and Ojibwe Studies.

Montpelier, Vermont: With a Commission grant, the Vermont Conservation and Youth Service Corps will expand the size and scope of their work statewide. For instance, corpsmembers will operate and maintain Lake St. Catherine State Park, collecting fees at the gate, hosting educational campfires for the visiting public, building trails, and conducting nature tours.

Boston, Massachusetts: City Year is an extraordinarily successful urban youth corps program in Boston which will use Commission funding to more than double its number of participants. City Year was started and run for five years on private funding, and will match the Commission expansion grant dollar-for-dollar with additional funds for the private sector. City Year participants range in age from 18 to 23 and come from diverse racial, ethnic, and socioeconomic backgrounds. Some corpsmembers are college graduates and other joined the corps literally from street gangs. Corpsmembers serve in dozens of activities such as tutoring in schools, rehabilitating housing projects, cleaning up city parks, and serving as mentors to troubled youth. In exchange for one year of

full-time service, they receive \$100 a week living allowance and a \$5,000 post-service benefit which they can use toward payment for further education.

The Commission has begun the critical work of building the supporting infrastructure for a national community service movement by training leaders, supporting state level collaborative efforts and by creating a national clearinghouse for the exchange of valuable lessons learned across programs and states.

While the funding and technical assistance that the Commission has provided in its short history is making a valuable and measurable impact in communities across the country, the Commission's first report to Congress may provide valuable and timely assistance as you consider the future of the national service movement. The National and Community Service Act required the Commission to submit an annual report to Congress covering the programs that receive grants and to "advise the President and the Congress concerning developments in national and community service that merit their attention." The Commission's report, "What You Can Do for Your Country", presents the current state of national and community service across the country and makes recommendations for the future.

The Commission developed its report by drawing on the expertise of its Board of Directors, extensive field visits, and by conducting hearings across the nation that promoted dialogue between policy makers, program coordinators and youth participants in national service.

The central finding of the report is that a vigorous and effective national and community service movement is already underway. Millions of Americans

are engaged in community service, a term which refers to the full scope of service activities -- full-time and part-time, unpaid and stipended, occurring in free-standing organizations such as service corps, as well as those integrated in schools and other community or service organizations or simply as one person reaching out to help others. National service, the concept which is receiving much of the current attention, is a part of community service which refers to a major, sustained commitment, full-time or part-time equivalent, over a longer period. The Commission estimates that 30,000 Americans are currently engaged in full-time national service.

In addition to the state of service in the field, the report offers a foundation on which to build an effective, high-quality system of national service. Among the major recommendations of the Commission:

- **National service need not and should not create a massive federal bureaucracy. The federal role should be to support, not to control.** Any national service effort should build upon the existing local programs. A network of diverse, locally-based programs would respond to America's great variety of needs and circumstances and to the variety of capabilities and interests of prospective volunteers better than a single federal program ever could. It would also create a sense of ownership of national service where the service was occurring and would build on the strengths of the country's many pre-existing service organizations. Parenthetically, the Commission's Board believes that the Commission itself, lead by a voluntary, bipartisan Board and staffed by 10 - 25 full-time employees, demonstrates that a large federal bureaucracy is both unwise and unnecessary.

- **Participants should provide needed services not otherwise provided, so they would not displace currently employed workers.**

Most participants would work in the areas of education, human services, public safety, and the environment. A number of comprehensive studies suggest that there are enough useful service assignments in these areas for more than 3 million full-time servers.

- **The federal government should only fund a portion of each program.**

The rest of the funding for each local program should come from a combination of state, local, and private sources. "Requiring that some funds come from local communities, both public and private sources, would ensure that they would become stakeholders, insisting upon high quality," says the report.

- **Instead of blanket federal support, local programs should compete for volunteers and funds.**

Competition among local service organizations would stimulate a rapid rate of learning, innovation, and improvement. "The challenge is not to pick a single program model," says the report, "but to devise a way of ensuring that programs emerge to respond to many needs and volunteers of widely varying background and interest, and that the best programs grow and spread while the worse ones improve or disappear."

- **Participation in national service should be voluntary rather than mandatory. Requiring young people to participate in national service would be counterproductive. Participants are likely to be most committed**

and effective when they have made a positive decision to volunteer. If they don't want to do it, their involvement will be wasteful and rebellious.

While the Commission has been moving quickly, events have been moving at an even more brisk pace. Since the issuance of the report, the public policy debate has changed both in substance and in tempo. The President has launched and the Commission is administering the Summer of Service, a new national service initiative which will engage 1,500 young people in an intensive, summer-long effort to meet the education, health, environment, and safety needs of children at risk. The President has laid out his vision of national service system through the National Service Trust Act, calling for the creation of opportunities for full-time and equivalent service and the creation of a new, federal entity to coordinate these opportunities and build a national network.

In response, the Commission's Board of directors has been analyzing what it would take to meet those objectives in a way that positively, significantly, and cost effectively impacts the lives of participants and the communities in which they are a part. Just two weeks ago, at its most recent meeting, the Commission's board of directors adopted strategies that are necessary to advance a national service system and a broader community service movement on the scale envisioned by the President. While these strategies have been pursued by the Commission for the past nineteen months, it re-emphasized the importance of the following:

- develop the infrastructure required to ensure local program and system effectiveness in the national service system

- develop the high quality program capacity needed for 100,000 full-time and/or part-time participants 1997.

Both strategies must be pursued simultaneously to ensure an effective national service system. Mediocre programs cannot be compensated for by any amount of infrastructure. High quality programs, and the national service system itself, cannot be sustained without the necessary infrastructure. The challenge is to create a system that carefully selects only high quality programs and then supports them with value-added infrastructure.

Based on our research and experience, we believe a decentralized, community-based National Service System can work if certain key operating principles are followed:

- **Ensure Quality Programs**

Quality programs should be rewarded; poor programs should be eliminated.

Create market-like mechanisms and competition whenever possible. Let participants choose programs and programs choose vendors for services.

National service should stress quality above quantity. The number of participants should be driven by quality of the programs, the proposals, and the applications not by the amount of funds available. Turn the money back if the infrastructure isn't there to support them.

Quality assurance is critical. Set standards, create market mechanisms, and carefully monitor and evaluate programs. Diverse program types should be encouraged but common standards of performance should be applied to them. Performance standards and

reviews should be centralized, but program operation should be decentralized

- **Develop the essential infrastructure/network**

Infrastructure should be built at several levels and include state capacity building, training, quality assurance, technical assistance, and evaluation.

Building state capacity is a value-added activity - states are sources for additional funding to leverage federal dollars and the service programs integrated into state school systems have long-term impact and broad reach.

Training is particularly important in building a national and community service system - to develop the service skills of the participants and leadership skills of those who will lead the field in the future.

In its research and through its experiences, the Commission believes that through service our nation and its people can be transformed and the ethic of civic responsibility can be strengthened and renewed.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

May 3, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-335

TO: Legislative Liaison Officer -

DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
EDUCATION - John Kristy - (202)401-2670 - 207
HHS - Frances White - (202)690-7760 - 328
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
TREASURY - Richard S. Carro - (202)622-1146 - 228
NEC - Sonia Mathews - (202)456-6722 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
ACTION - Stewart A. Davis - (202)606-4833 - 244
CNCS - Terry Russell - (202)724-0600 -
PEACE CORPS - Bob Martin - (202)606-3114 - 254

FROM: JANET R. FORSGREN (for) *Janet R. Forsgren*
Assistant Director for Legislative Reference

OMB CONTACT: Chris MUSTAIN (395-3923)
Secretary's line (for simple responses): 395-7362

SUBJECT: VA Proposed Report RE: HR 1193, National
Voluntary Service and Educational Opportunity
Act of 1993

DEADLINE: 1:30 PM May 7, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Barbara Selfridge
Todd Grams
Justin Kopca
Larry Matlack
Pam Van Wie
Barry White
Pat Smith
Jack Lew
Tom Stanners
Bob Rideout
Art Stigile
Steve Redburn
Jonathan Breul

Greg Simon/Jim Kohlenberger
Bill McQuaid
Angela Antonelli
Steve Semenuk
Mark Sandy
Roger Adkins
Chris Bertram
Bob Damus
Bill Galston
Martha Foley
Connie Bowers
Delphine Motley
Janet Forsgren

Pam McElwee

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Chris MUSTAIN
Office of Management and Budget
Fax Number: (202) 395-6148
Analyst/Attorney's Direct Number: (202) 395-3923
Branch-Wide Line (to reach secretary): (202) 395-7362

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

SUBJECT: VA Proposed Report RE: HR 1193, National
Voluntary Service and Educational Opportunity
Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this
_____ response sheet



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

DRAFT

The Honorable G. V. (Sonny) Montgomery
Chairman, Committee on Veterans' Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Department of Veterans Affairs (VA) and our estimate of costs concerning H. R. 1193, a bill "To establish a program of voluntary national service for young people and senior citizens."

VA appreciates the intent of H. R. 1193 to engage our Nation's youth and senior citizens in voluntary national service, with all the obligations and benefits that entails both for the individual and for our society. However, we cannot support this legislation in its present form and would suggest that a better approach is embodied in the Administration's program.

President Clinton has often expressed the importance and long-term benefits of investing in America. Speaking at Rutgers University on March 1, 1993, he noted that "Americans of every generation face profound challenges in meeting the needs that have been neglected for too long in this Country -- from city streets plagued by crime and drugs to classrooms where girls and boys must learn the skills they need for tomorrow, to hospital wards where patients need more care. All across America we have problems that demand our common attention"

During the same speech, the President announced an initiative to involve young Americans in voluntary service to renew and repair the Country block by block through a national service program. One element of this plan would allow students, mostly in college, to pay off tuition debts by working in public service jobs. Further, the President indicated his intention to avoid creating a huge Federal bureaucracy by building around State and local projects that have already proved successful. This program, to cost \$7.4 billion over the first 4 years of its inception, will start small, but over time will develop into a full-scale program open to virtually all college students.

We note that H. R. 1193, unlike the President's initiative, requires additional bureaucratic structures for implementation and includes an option of service in the Armed Forces. Under this option, individuals who elect to serve in the Armed Forces could serve 2 years of active duty with 2 years in the Selected

2.

Honorable G.V. (Sonny) Montgomery

Reserve and 4 years in the Individual Ready Reserve, or could choose 8 years in the Selected Reserve. While serving, a participant would receive approximately two-thirds of the basic pay and allowances otherwise applicable to regular members of the Armed Forces with the same pay grade and years of service. Upon honorable completion of the active duty tour, a participant may receive up to \$24,000 for education or housing benefits. An individual whose volunteer tour consists entirely of Selected Reserve service may, after satisfactory completion of 1 year's service, receive up to \$12,000 of such benefits. Our Department would be made responsible for administering such benefits.

VA defers to the views of the Department of Defense as to whether the proposed Citizens Corp service in the Armed Forces is necessary to meet the manpower requirements of the military, or otherwise would be an appropriate, effective component of a national volunteer service program. However, VA, as the Department made responsible for providing benefits under the Armed Forces component of H. R. 1193, notes with concern the substantial disparity between the education and housing benefits that would be afforded Citizens Corp members and those we currently provide to regular veterans, including veterans of wartime service.

We note, for example, that the proposed \$24,000 education benefit grant for service under the Armed Forces option is far more generous than the \$14,000 benefit (less the current military pay reduction) allowed under the Montgomery GI Bill for a 3-year active duty obligation. Likewise, a \$24,000 housing grant, as proposed, could be a much more valuable (and costly) benefit than the current VA home loan guaranty benefit. The Citizens Corp recipients would have much greater latitude than current veterans on spending the money for the purchase or construction of a home, and would have \$24,000 instant equity in a newly purchased home. This hardly seems equitable, particularly in view of the risks and deprivations suffered by many veterans of wartime service.

Finally, this measure lacks the specificity needed to determine legislative intent in such critical areas as the form, frequency, and funding source of the education and housing benefits. Congressional policy concerning the use of these benefits would have to be further developed and specific provisions of this bill clarified in order to avoid uncertainty of administration.

In the absence of such expressed policy and with inadequate information available with which to make necessary cost assumptions about potential program usage under the proposed Armed Forces service option, VA is unable to provide a cost estimate for H. R. 1193 at this time.

3.

Honorable G.V. (Sonny) Montgomery

For the reasons noted above, VA cannot support enactment of H. R. 1193 in its current form. Instead, we urge consideration of the forthcoming legislation implementing the Administration's national service program, which the President believes "will change America forever and for the better."

103D CONGRESS
1ST SESSION

H. R. 1193

To establish a program of voluntary national service for young people and senior citizens.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1993

Mrs. KENNELLY introduced the following bill; which was referred jointly to the Committees on Armed Services, Education and Labor, Veterans' Affairs, Ways and Means, and Foreign Affairs

A BILL

To establish a program of voluntary national service for young people and senior citizens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Voluntary
5 Service and Educational Opportunity Act of 1993".

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Purposes.
- Sec. 4. Definitions.

TITLE I—ESTABLISHMENT OF THE CITIZENS CORPS

- Sec. 101. Establishment of the Citizens Corps.
- Sec. 102. Individuals eligible to serve in the Citizens Corps.
- Sec. 103. Terms of service.
- Sec. 104. Types of national and community service.
- Sec. 105. Application to serve in the Citizens Corps.

TITLE II—ADMINISTRATION OF THE CITIZENS CORPS

Subtitle A—Administration of the Civilian Service and Senior Service

- Sec. 201. Administration of the Civilian Service and Senior Service.
- Sec. 202. Duties of the Commission.
- Sec. 203. Eligibility for general grants.
- Sec. 204. Allocation of funds.
- Sec. 205. Reports.

Subtitle B—Provision of National Service Positions for Members of the Civilian Service and Senior Service

- Sec. 221. National service plans and volunteer service areas.
- Sec. 222. Establishment of national service councils.
- Sec. 223. Duties of national service councils.
- Sec. 224. Volunteer recruitment and placement plan.
- Sec. 225. Review and approval of plan.
- Sec. 226. Service sponsors.

Subtitle C—Deferred Placement of Members of the Civilian Service

- Sec. 231. Deferred Placement Program.
- Sec. 232. Eligibility to participate in Deferred Placement Program.
- Sec. 233. Acceptance.
- Sec. 234. Limitation on the use of assistance and reduction of subsequent assistance.
- Sec. 235. Placement.
- Sec. 236. Breach of contract.

Subtitle D—Administration of the Citizens Corps With Regard to Service in the Armed Forces

- Sec. 241. Administration of the Citizens Corps with regard to service in the Armed Forces.
- Sec. 242. Deferred enlistment.
- Sec. 243. Reports.

TITLE III—BENEFITS FOR PARTICIPATING IN THE CITIZENS CORPS

- Sec. 301. Stipend and support services for members of the Civilian Service and Senior Service.
- Sec. 302. Compensation for members of the Citizens Corps serving in the Armed Forces.
- Sec. 303. Educational and housing benefits for members of the Civilian Service of the Citizens Corps.
- Sec. 304. Educational and housing benefits for members of the Citizens Corps serving in the Armed Forces.
- Sec. 305. Provision of educational benefits.
- Sec. 306. Provision of housing benefits.
- Sec. 307. Time limitation on the use of assistance.

Sec. 308. Exclusion of assistance from gross income.

Sec. 309. Recoupment of assistance.

Sec. 310. Reports.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Educational and housing benefits for participants in the Peace Corps and VISTA.

Sec. 402. Authorization of appropriations.

Sec. 403. Effective date.

1 SEC. 3. PURPOSES.

2 The purposes of this Act are—

3 (1) to renew the ethic of civic obligation in the
4 United States and spread the responsibilities of
5 citizenship more equitably;

6 (2) to expand opportunities for young people in
7 the United States to—

8 (A) pursue educational, vocational, and
9 professional objectives after secondary school;
10 and

11 (B) purchase affordable housing;

12 (3) to mobilize young people and senior Ameri-
13 cans to deal with pressing social problems in the
14 United States, including health, education, literacy,
15 child care, hunger, housing, and homelessness;

16 (4) to give senior Americans the opportunity to
17 use their special skills and experience to—

18 (A) provide national service; and

19 (B) assist the Commission on National and
20 Community Service and national service coun-
21 cils in administering national service programs;

1 (5) to strengthen national defense by—

2 (A) encouraging more young people to vol-
3 unteer for service in the active and reserve com-
4 ponents of the Armed Forces;

5 (B) making the composition of the Armed
6 Forces more representative of the country at
7 large; and

8 (C) assisting the Armed Forces in meeting
9 their personnel goals; and

10 (6) to give young people the experience, self-dis-
11 cipline, and self-confidence they need to overcome
12 barriers to opportunity.

13 **SEC. 4. DEFINITIONS.**

14 For purposes of this Act:

15 (1) The term “active duty” has the meaning
16 given to such term in section 101(22) of title 10,
17 United States Code.

18 (2) The term “area” means a volunteer service
19 area.

20 (3) The term “Armed Forces” has the meaning
21 given to such term in section 101(4) of title 10,
22 United States Code.

23 (4) The term “Citizens Corps” means the na-
24 tional service program established under section
25 101.

1 (5) The term "Commission" means the Com-
2 mission on National and Community Service estab-
3 lished under section 190 of the National and Com-
4 munity Service Act of 1990 (42 U.S.C. 12651).

5 (6) The term "community service" means serv-
6 ice of the type described in section 104(a) and such
7 other services essential and necessary to the commu-
8 nity as the Corporation, by rule, may prescribe.

9 (7) The term "council" means a national serv-
10 ice council.

11 (8) The term "Deferred Placement Program"
12 means the deferred placement program for members
13 of the Civilian Service established in subtitle C of
14 title II.

15 (9) The term "educational institution" means a
16 vocational school (including a technical school) or in-
17 stitution of higher learning.

18 (10) The term "Governor" means the
19 chief executive officer of a State.

20 (11) The term "Individual Ready Reserve"
21 means that portion of the Ready Reserve not in a
22 Selected Reserve.

23 (12) The term "institution of higher learning"
24 has the meaning given to such term in section
25 1652(f) of title 38, United States Code.

1 (13) The term "local government" means a
2 general purpose political subdivision of a State which
3 has the power to levy taxes and spend funds, as well
4 as general corporate and police powers.

5 (14) The term "nonprofit organization" means
6 an organization—

7 (A) described in section 501(c) of the In-
8 ternal Revenue Code of 1986 (26 U.S.C.
9 501(c)); and

10 (B) exempt from taxation under section
11 501(a) of such Code (26 U.S.C. 501(a)).

12 (15) The term "program of education or train-
13 ing" means any curriculum or any combination of
14 unit courses or subjects pursued at an educational
15 institution or training establishment which is gen-
16 erally accepted as necessary to fulfill requirements
17 for the attainment of a predetermined and identified
18 educational, professional, or vocational objective.
19 Such term also means any curriculum of unit
20 courses or subject pursued at an educational institu-
21 tion or training establishment which fulfills require-
22 ments for the attainment of more than one predeter-
23 mined and identified educational, professional, or vo-
24 cational objective if the objectives pursued are gen-

erally recognized as being reasonably related to a single career field.

(16) The term "Ready Reserve" means the Ready Reserve described in section 268(a) of title 10, United States Code.

(17) The term "reserve component" has the meaning given to such term in 101(24) of title 37, United States Code.

(18) The term "school dropout" has the meaning established for such term by the Secretary of Education under section 6201(a) of the Elementary and Secondary Education Act of 1964 (20 U.S.C. 3271(a)).

(19) The term "Secretary concerned" has the meaning given to such term in section 101(8) of title 10, United States Code.

(20) The term "senior" means an individual who is age 65 or over and willing to work full- or part-time in national service.

(21) The term "Selected Reserve" means the Selected Reserve described in section 268(b) of title 10, United States Code.

(22) The term "State" means any of the several States, the District of Columbia, American Samoa, the Federated States of Micronesia, Guam,

1 the Republic of the Marshall Islands, the Common-
2 wealth of the Northern Mariana Islands; the
3 Commonwealth of Puerto Rico, Palau, and
4 the Virgin Islands.

5 (23) The term "training establishment" has the
6 meaning given to such term in section 1652(e) of
7 title 38, United States Code.

8 (24) The term "vocational school" has the
9 meaning given to such term in section 435(c) of the
10 Higher Education Act of 1965 (20 U.S.C. 1085(c)).

11 **TITLE I—ESTABLISHMENT OF** 12 **THE CITIZENS CORPS**

13 **SEC. 101. ESTABLISHMENT OF THE CITIZENS CORPS.**

14 There is hereby established a Citizens Corps which
15 shall provide the following national service options:

16 (1) Civilian Service.

17 (2) Service in the Armed Forces.

18 (3) Senior Service.

19 **SEC. 102. INDIVIDUALS ELIGIBLE TO SERVE IN THE CITI-** 20 **ZENS CORPS.**

21 (a) CIVILIAN SERVICE.—

22 (1) ELIGIBILITY.—An individual may serve in
23 the Civilian Service of the Citizens Corps if such
24 individual—

25 (A) is age 17 or over;

1 (B) has received a high school diploma or
2 its equivalent or is a school dropout; and

3 (C) is a citizen of the United States or
4 lawfully admitted for permanent residence.

5 (2) SPECIAL RULE FOR SCHOOL DROPOUTS.—

6 An individual who is a school dropout may serve in
7 the Civilian Service of the Citizens Corps only if the
8 individual enters into an agreement with a national
9 service council to pursue a course of study, approved
10 by the appropriate State agency, designed to result
11 in the individual earning the equivalent of a high
12 school diploma during the term of service
13 of the individual.

14 (b) SERVICE IN THE ARMED FORCES.—Subject to
15 the then existing personnel requirements of the Armed
16 Forces, an individual shall be eligible to enlist for service
17 in the Armed Forces as a member of the Citizens Corps
18 if such individual—

19 (1) has received a high school diploma or its
20 equivalent;

21 (2) satisfies the applicable requirements for en-
22 listment in the Armed Forces specified in chapter 31
23 of title 10, United States Code; and

24 (3) satisfies such other eligibility criteria estab-
25 lished by the Secretary of Defense by rule.

1 (c) SENIOR SERVICE.—An individual may serve in
2 the Senior Service of the Citizens Corps if such
3 individual—

4 (1) is a senior; and

5 (2) meets the eligibility criteria for service in
6 the Senior Service established by the Commission.

7 **SEC. 103. TERMS OF SERVICE.**

8 (a) CIVILIAN SERVICE.—

9 (1) ONE-YEAR TERM.—An individual serving in
10 the Civilian Service of the Citizens Corps shall agree
11 to perform full-time national service in such service
12 for a one-year term.

13 (2) EXTENSION.—A member of the Civilian
14 Service of the Citizens Corps serving a one-year
15 term of service may request the extension of such
16 term for an additional year. The Commission shall
17 issue rules specifying the procedure for making and
18 considering such a request.

19 (b) SERVICE IN THE ARMED FORCES.—An individual
20 enlisting for service in the Armed Forces as a member
21 of the Citizens Corps shall select one of the following
22 service obligations in the Armed Forces:

23 (1) Two years of active duty in the Armed
24 Forces, two years in the Selected Reserve of a re-

1 serve component, and four years in the Individual
2 Ready Reserve.

3 (2) Eight years in the Selected Reserve
4 of a reserve component.

5 (c) SENIOR SERVICE.—An Individual may serve in
6 the Senior Service of the Citizens Corps—

7 (1) for such period of time as allowed by the
8 Commission; and

9 (2) for either full- or part-time service.

10 **SEC. 104. TYPES OF NATIONAL AND COMMUNITY SERVICE.**

11 (a) CIVILIAN SERVICE AND SENIOR SERVICE.—An
12 individual serving in the Civilian Service or Senior Service
13 of the Citizens Corps may perform national service to meet
14 the unmet service needs of a State, local government or
15 other community. Such national service may include the
16 following types of service:

17 (1) Educational service, such as literacy pro-
18 grams, Head Start, tutorial assistance, and service
19 in schools, libraries, and adult education centers.

20 (2) Human service, such as—

21 (A) service in hospitals, hospices, clinics,
22 community health centers, homes for the elder-
23 ly, and child-care centers; and

24 (B) service in programs to assist the elder-
25 ly, poor, and homeless, including programs to

1 build, restore, and maintain housing for the
2 poor and homeless.

3 (3) Conservation service, such as service in pro-
4 grams to conserve, maintain, and restore natural re-
5 sources in the urban and rural environment, provide
6 recreational opportunities, and encourage community
7 betterment or beautification.

8 (4) Public Safety service in support of the
9 criminal justice system, including police, courts,
10 prisons, and border patrol.

11 (5) Service in existing national programs, such
12 as referral and placement in the Peace Corps and
13 VISTA.

14 (b) SERVICE IN THE ARMED FORCES.—The Sec-
15 retary of Defense shall designate by rule appropriate na-
16 tional service positions for members of the Citizens Corps
17 serving in the Armed Forces.

18 **SEC. 105. APPLICATION TO SERVE IN THE CITIZENS CORPS.**

19 (a) CIVILIAN SERVICE AND SENIOR SERVICE.—

20 (1) APPLICATION.—To serve in the Civilian or
21 Senior Service of the Citizens Corps, an individual
22 shall submit an application to a national service
23 council established under section 222 for a volunteer
24 service area in the State in which the applicant is
25 a resident. The application shall be in such form and

1 containing such information as the Commission shall
2 require by rule.

3 (2) RESIDENCY REQUIREMENTS.—For purposes
4 of paragraph (1), an individual shall be considered
5 a resident of a State if such individual has resided
6 in such State for the majority of the 1-year period
7 immediately preceding the date of such application.
8 The Corporation on an individual basis may waive
9 this residency requirement.

10 (3) PLACEMENT.—Upon the receipt of an appli-
11 cation, the national service council may place the ap-
12 plicant in a national service position in the area tak-
13 ing into consideration the preference and skills of
14 the applicant and the needs of the area. If the area
15 does not have a national service position available
16 for the applicant, or the council determines (after
17 consultation with the applicant) that the applicant is
18 better qualified for a position outside of the area,
19 the council may refer the applicant for placement to
20 another national service council or a Federal, State,
21 or local government agency accepting members of
22 the Citizens Corps.

23 (4) MEMBERS TREATED AS VOLUNTEERS.—For
24 purposes of Federal laws authorizing a Federal
25 agency to accept the services of a volunteer, an ap-

1 plicant placed with an agency described in para-
2 graph (3) shall be considered to be a volunteer.

3 (b) SERVICE IN THE ARMED FORCES.—The Sec-
4 retary of Defense shall establish a system to enlist individ-
5 uals for service in the Armed Forces as members of the
6 Citizens Corps.

7 **TITLE II—ADMINISTRATION OF** 8 **THE CITIZENS CORPS**

9 **Subtitle A—Administration of the** 10 **Civilian Service and Senior Service**

11 **SEC. 201. ADMINISTRATION OF THE CIVILIAN SERVICE AND** 12 **SENIOR SERVICE.**

13 The Commission on National and Community Service
14 shall be responsible for administering the Civilian Service
15 and Senior Service of the Citizens Corps.

16 **SEC. 202. DUTIES OF THE COMMISSION.**

17 (a) ESTABLISHMENT OF POLICY AND OVERSIGHT
18 RESPONSIBILITIES.—The Corporation shall by rule—

19 (1) establish the types and amounts of allow-
20 ances and support authorized for members of the
21 Civilian and Senior Services under section 301;

22 (2) specify the types of national service activi-
23 ties appropriate for members of the Civilian and
24 Senior Services;

1 (3) establish a procedure to monitor the provi-
2 sion of financial assistance under title III to assure
3 that—

4 (A) graduates of the Citizens Corps faith-
5 fully completed their terms of service before
6 receiving such assistance; and

7 (B) members of the Citizens Corps receiv-
8 ing such assistance during their terms of serv-
9 ice faithfully perform national service;

10 (4) establish a procedure for examining the ef-
11 fect that national service under this Act has on the
12 availability and terms of employment of employees in
13 the volunteer service area where such
14 service is performed; and

15 (5) establish the rates of pay, eligibility criteria,
16 and terms of service for members of the Sen-
17 ior Service.

18 (b) GENERAL GRANTS.—Pursuant to the allocation
19 formulas specified in section 204, the Commission shall
20 make grants to States to assist such States—

21 (1) in paying stipends and wages under section
22 301;

23 (2) in providing and administering national
24 service opportunities in each State for members of
25 the Civilian and Senior Services; and

1 (3) in making grants to national service coun-
2 cils in each State to carry out their duties under this
3 Act.

4 (c) SUPPLEMENTAL GRANTS.—

5 (1) AUTHORITY TO PROVIDE.—The Commission
6 may make grants during a fiscal year—

7 (A) to a State which the Commission de-
8 termines has an unusual increase in the number
9 of members of the Civilian and Senior Services
10 (excluding members serving with Federal agen-
11 cies) in such State for such fiscal year; and

12 (B) to a Federal agency to assist such
13 agency in accepting or placing members of the
14 Civilian and Senior Services for such fiscal
15 year.

16 (2) ELIGIBILITY.—To be eligible for a grant
17 under paragraph (1), a Federal agency or State
18 shall submit to the Commission an application—

19 (A) in such form and at such time as the
20 Commission may require by rule;

21 (B) containing, in the case of an applica-
22 tion submitted by a State, the assurances speci-
23 fied in section 203(c); and

24 (C) containing such other information as
25 the Commission may require by rule.

1 (d) OTHER DUTIES.—

2 (1) INFORMATION.—The Commission shall
3 serve as a source for information on national service
4 opportunities in the United States.

5 (2) PLACEMENT ASSISTANCE.—The Commis-
6 sion shall assist a State in placing applicants outside
7 of such State if the State is unable to place the ap-
8 plicant in a position in the State and shall assist
9 Federal agencies in acquiring participants for na-
10 tional service positions in the Federal Government.

11 (3) INVESTIGATIONS.—The Commission shall
12 receive and investigate claims of abuses in the place-
13 ment of participants or the administration of
14 national service opportunities by a State, na-
15 tional service council, or service provider.

16 (4) ACADEMIC CREDIT.—The Commission shall
17 encourage institutions of higher education to confer
18 appropriate academic credit to members of the Citi-
19 zens Corps who successfully complete their term of
20 service.

21 (e) RECORDS.—The Commission shall keep accurate
22 and complete records of its activities and transactions.
23 Such records shall be made available for audit and exam-
24 ination by the Comptroller General of the United States

1 or duly authorized representatives of the Comp-
2 troller General.

3 **SEC. 203. ELIGIBILITY FOR GENERAL GRANTS.**

4 (a) **APPLICATION REQUIRED.**—To be eligible for a
5 grant under section 202(b), a State shall submit to the
6 Commission an application describing—

7 (1) each volunteer service area in such State;

8 (2) the method by which members of the Civil-
9 ian and Senior Services will be placed in national
10 service positions in the State;

11 (3) the anticipated number of such members
12 during such term;

13 (4) the training and support services that will
14 be provided such members; and

15 (5) the method by which service sponsors will
16 be selected and the requirements imposed on such
17 sponsors.

18 (b) **COPIES OF MATERIALS.**—A State shall include in
19 an application submitted under subsection (a) copies of
20 all volunteer recruitment and placement plans prepared
21 for the State for the period covered by the application.

22 (c) **ASSURANCES.**—An application submitted under
23 subsection (a) shall contain assurances by the State that
24 for the period covered by the application—

1 (1) the State will use non-Federal funds to pay
2 not less than 25 percent of the cost (including the
3 cost of stipends, wages, and allowances provided by
4 the State under section 301) of providing and ad-
5 ministering national service positions in the State
6 for members of the Civilian and Senior Services
7 (other than members placed with Federal agencies);
8 and

9 (2) the State will maintain State expenditures
10 for community service programs operated by the
11 State on the effective date of this Act at a level
12 equal to not less than the average level of such ex-
13 penditures maintained by the State for the two-fis-
14 cal-year period immediately preceding the effective
15 date of this Act.

16 (d) TIME AND FORM.—An application under sub-
17 section (a) shall be in such form and shall be submitted
18 at such time as the Commission may require and shall
19 contain such other information as the Commission consid-
20 ers to be appropriate.

21 (e) EXCEPTION TO MATCHING FUNDS REQUIRE-
22 MENT.—A State may offset against the matching funds
23 requirement specified in subsection (c)(1) not more than
24 50 percent of the administrative costs incurred by the
25 State in administering community service programs for

1 young people operated by the State on the effective date
2 of this Act.

3 (f) **WAIVER OF REQUIREMENT TO MAINTAIN EX-**
4 **PENDITURES.**—The Commission may, upon the request of
5 a State, waive the requirement specified in subsection
6 (c)(2) that the State maintain expenditures for community
7 service programs if the Commission determines that ex-
8 traordinary economic conditions in the State justify the
9 waiver.

10 **SEC. 204. ALLOCATION OF FUNDS.**

11 (a) **TRANSITIONAL ALLOCATIONS.**—For each fiscal
12 year during the five-year period beginning on the effective
13 date of this Act, the Commission shall make a grant to
14 an eligible State in an amount that bears the same ratio
15 to the sums appropriated for grants under section 202(b)
16 for such fiscal year as the anticipated average number of
17 members in the Civilian and Senior Services (as deter-
18 mined by the Commission and excluding anticipated mem-
19 bers serving with Federal agencies) in such State for such
20 fiscal year bears to the anticipated average number of
21 such members in all States for such fiscal year.

22 (b) **SUBSEQUENT ALLOCATIONS.**—For each fiscal
23 year beginning after the end of the five-year period re-
24 ferred to in subsection (a), the Commission shall make a
25 grant to an eligible State in an amount that bears the

1 same ratio to the sums appropriated for grants under sec-
2 tion 202(b) for such fiscal year as the average number
3 of members in the Civilian and Senior Services (excluding
4 members serving with Federal agencies) in such State for
5 the preceding fiscal year bears to the average number of
6 such members in all States for the preceding fiscal year.

7 **SEC. 205. REPORTS.**

8 (a) **REQUIRED.**—On or before May 15 of each cal-
9 endar year, the Commission shall submit to the President
10 a report on the operation of the Civilian Service and the
11 Senior Service of the Citizens Corps and the activities of
12 the Commission during the preceding fiscal year. The
13 President shall transmit a copy of the report to
14 the Congress.

15 (b) **CONTENT OF REPORT.**—

16 (1) **IN GENERAL.**—Each report shall include a
17 comprehensive and detailed description of the oper-
18 ations, activities, financial condition, and accom-
19 plishments of the Commission under this Act during
20 the fiscal year covered by such report and
21 such recommendations as the Commission considers
22 appropriate.

23 (2) **SPECIAL REQUIREMENTS FOR INITIAL RE-**
24 **PORTS.**—In the first five reports submitted under
25 subsection (a), the Commission shall specify—

1 (A) the anticipated number of national
2 service positions that will be available for mem-
3 bers of the Civilian Service and Senior Service
4 of the Citizens Corps in the fiscal year begin-
5 ning in the calendar year in which such report
6 is submitted; and

7 (B) the anticipated cost of operating the
8 Civilian Service and Senior Service for such
9 fiscal year.

10 **Subtitle B—Provision of National**
11 **Service Positions for Members**
12 **of the Civilian Service and Sen-**
13 **ior Service**

14 **SEC. 221. NATIONAL SERVICE PLANS AND VOLUNTEER**
15 **SERVICE AREAS.**

16 (a) NATIONAL SERVICE PLAN.—The Governor of
17 each State shall prepare a national service plan for the
18 State, which shall specify priorities in the State for provid-
19 ing national service opportunities for members of the
20 Civilian and Senior Services of the Citizens Corps.

21 (b) VOLUNTEER SERVICE AREAS.—Pursuant to the
22 plan prepared under subsection (a), the Governor shall
23 designate volunteer service areas for the State, each of
24 which—

1 (1) is comprised of the State or one or more ju-
2 risdictions of units of general local government;

3 (2) will promote effective provision of national
4 services; and

5 (3) is consistent with other designated
6 areas in which related services are provided
7 under other Federal or State programs.

8 (c) CONSULTATION.—Before preparing the national
9 service plan or designating (or redesignating) a volunteer
10 service area, the Governor shall consult with—

11 (1) appropriate State and local government offi-
12 cials;

13 (2) representatives of community service organi-
14 zations, educational institutions, business organiza-
15 tions, and organized labor; and

16 (3) other affected persons or organizations in
17 the area.

18 (d) REDESIGNATION.—

19 (1) TWO YEAR DELAY.—Effective after the end
20 of the two-year period beginning on the date the
21 Governor first designates volunteer service areas
22 under subsection (b), the Governor may redesignate
23 such areas in accordance with such subsection.

1 (2) SPECIAL RULE.—Notwithstanding para-
2 graph (1), the Governor shall consider making such
3 a redesignation at the request of the Commission.

4 **SEC. 222. ESTABLISHMENT OF NATIONAL SERVICE COUN-**
5 **CILS.**

6 (a) COMPOSITION OF LOCAL COUNCILS.—There shall
7 be a national service council for each volunteer service
8 area established under section 221. A council shall consist
9 of—

10 (1) representatives of nonprofit community
11 service organizations in the area who have substan-
12 tial management or policy responsibility with such
13 organizations;

14 (2) representatives of local governments;

15 (3) representatives of educational agencies and
16 institutions, business concerns, rehabilitation agen-
17 cies, community-based organizations, and economic
18 development agencies in the area; and

19 (4) representatives of organized labor.

20 (b) CHAIRPERSON.—The members of a council shall
21 select one of the members to serve as chairperson of the
22 council.

23 (c) SELECTION OF MEMBERS.—

24 (1) EDUCATION REPRESENTATIVES.—Edu-
25 cation representatives on a council shall be selected

1 from among individuals recommended by local edu-
2 cational agencies, vocational education institutions,
3 institutions of higher learning, or general organiza-
4 tions of such agencies or institutions, and by private
5 and proprietary schools or general organizations of
6 such schools, within the area.

7 (2) LABOR REPRESENTATIVES.—Labor rep-
8 resentatives on a council shall be recommended by
9 recognized State and local labor organizations or
10 appropriate building trades councils.

11 (3) OTHER MEMBERS.—The remaining mem-
12 bers of a council shall be selected from individuals
13 recommended by interested organizations.

14 (d) METHOD OF SELECTION.—

15 (1) SINGLE LOCAL GOVERNMENT.—In any case
16 in which there is only one unit of local government
17 in the volunteer service area, the chief executive offi-
18 cer of such unit shall appoint members to the coun-
19 cil from the individuals recommended under sub-
20 section (c).

21 (2) MULTIPLE LOCAL GOVERNMENTS.—In any
22 case in which there are two or more such units of
23 local government in the area, the chief executive offi-
24 cers of such units shall appoint members to the
25 council from the individuals so recommended in ac-

1 cordance with an agreement entered into by such
2 units of general local government. In the absence of
3 such an agreement, the appointments shall be
4 made by the Governor from the individuals so
5 recommended.

6 (e) NUMBER OF MEMBERS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the number of members of a council shall
9 be determined by the council.

10 (2) INITIAL SELECTION.—The initial number of
11 members of a council shall be determined—

12 (A) by the chief executive officer in the
13 case described in subsection (d)(1);

14 (B) by the chief executive officers in ac-
15 cordance with the agreement in the case
16 described in subsection (d)(2); or

17 (C) by the Governor in the absence of such
18 agreement.

19 (f) TERMS.—Members shall be appointed for fixed
20 and staggered terms and may serve until their successors
21 are appointed. Any vacancy in the membership of the
22 council shall be filled in the same manner as the original
23 appointment. Any member of the council may be removed
24 by the council for cause in accordance with procedures
25 established by the council.

1 (g) CERTIFICATION OF COUNCIL.—

2 (1) IN GENERAL.—The Governor shall certify a
3 council if the Governor determines that its composi-
4 tion and appointments are consistent with the provi-
5 sions of this section. Such certification shall be made
6 or denied within 30 days after the date on which the
7 Governor receives a list of council members and any
8 supporting documentation the Governor considers
9 necessary.

10 (2) FAILURE TO CERTIFY.—If the Governor de-
11 nies certification, the Governor shall—

12 (A) inform the chief executive officer or of-
13 ficers submitting the list and documentation of
14 the reasons for denial; and

15 (B) provide for the review of any revised
16 list and documentation.

17 (3) EFFECT OF CERTIFICATION.—Upon certifi-
18 cation, a council shall be convened within 30 days by
19 the officer or officers who made the appointments to
20 such council under subsection (d) and may receive
21 funds, consistent with section 224, to carry out the
22 duties of the council under this Act.

23 **SEC. 223. DUTIES OF NATIONAL SERVICE COUNCILS.**

24 (a) RECRUITMENT AND PLACEMENT OF VOLUN-
25 TEERS.—A national service council shall—

1 (1) accept applications from individuals seeking
2 to serve in the Civilian Service and Senior Service of
3 the Citizens Corps; and

4 (2) place such individuals in national service po-
5 sitions consistent with the volunteer recruitment and
6 placement plan of such council and section 104.

7 (b) PREPARATION AND IMPLEMENTATION OF VOLUN-
8 TEER RECRUITMENT AND PLACEMENT PLAN.—The coun-
9 cil shall be responsible for preparing and implementing the
10 volunteer recruitment and placement plan required under
11 section 224.

12 (c) OVERSIGHT.—The council shall provide policy
13 guidance for, and exercise oversight (including review,
14 monitoring, auditing, and evaluation) with respect to ac-
15 tivities under the volunteer recruitment and placement
16 plan for the volunteer service area of such council.

17 (d) OTHER DUTIES.—

18 (1) BUDGET.—In accordance with the volunteer
19 recruitment and placement plan, a council shall pre-
20 pare and approve a budget for operation of the
21 council.

22 (2) STAFF.—A council may hire staff or con-
23 tract for services from nonprofit organizations. In
24 hiring staff, a council is encouraged to include mem-
25 bers of the Senior Service of the Citizens Corps.

1 (3) GIFTS.—A council may solicit and accept
2 contributions and grant funds from public and
3 private sources.

4 **SEC. 224. VOLUNTEER RECRUITMENT AND PLACEMENT**
5 **PLAN.**

6 (a) CONDITION FOR RECEIVING FUNDS.—Funds ap-
7 propriated for a fiscal year may not be provided under
8 this Act to a national service council unless the council
9 is certified pursuant to section 222(g). Such funds shall
10 be provided only pursuant to an approved volunteer re-
11 cruitment and placement plan prepared by such council
12 for a period of two fiscal years, including the fiscal year
13 for which such funds are provided.

14 (b) PREPARATION OF PLAN.—When preparing a vol-
15 unteer recruitment and placement plan, a council shall
16 consult the national service plan for the State prepared
17 by the Governor under section 221.

18 (c) CONTENTS OF PLAN.—Each volunteer recruit-
19 ment and placement plan shall—

20 (1) identify the national service council that will
21 administer the plan and is to be the grant recipient
22 of funds from the State;

23 (2) describe the national services to be pro-
24 vided, including the extent such services reflect the

1 priorities contained in the national service plan for
2 the State;

3 (3) contain procedures for recruiting and plac-
4 ing members of the Citizens Corps;

5 (4) describe the support services to be provided
6 to members of the Citizens Corps, including the
7 types of assistance to be provided to members who
8 are school dropouts to assist such members earn the
9 equivalent of a high school diploma;

10 (5) contain procedures, consistent with section
11 226, for selecting service sponsors, including proce-
12 dures for council consideration of the past perform-
13 ance of each service sponsor in national services or
14 related activities, fiscal accountability, and ability to
15 meet performance standards;

16 (6) contain the budget for the council for the
17 two-fiscal year period covered by such plan;

18 (7) contain fiscal control, accounting, audit and
19 debt collection procedures that assure the proper
20 distribution and accounting of funds received under
21 this Act; and

22 (8) provide for the council to submit to the
23 Governor an annual report that includes a descrip-
24 tion of—

1 (A) activities conducted during the fiscal
2 year covered by such report;

3 (B) service sponsors in the volunteer serv-
4 ice area;

5 (C) members of the Citizens Corps placed
6 by such council, including the number of mem-
7 bers who are school dropouts; and

8 (D) the extent to which the activities ex-
9 ceeded or failed to meet relevant performance
10 standards established by the Commission.

11 (d) MODIFICATION OF PLAN.—If changes in the na-
12 tional service needs of the volunteer service area, funding,
13 or other factors require substantial deviation from an ap-
14 proved plan, the national service council may submit a
15 modification of such plan, which shall be subject to review
16 in accordance with section 225.

17 **SEC. 225. REVIEW AND APPROVAL OF PLAN.**

18 (a) PUBLICATION OF PROPOSED PLAN.—Not later
19 than 120 days before the beginning of the two-fiscal year
20 period covered by a proposed volunteer recruitment and
21 placement plan, the council shall—

22 (1) publish the proposed plan or a summary
23 thereof; and

24 (2) make such plan available for public review
25 and comment.

1 (b) SUBMISSION OF PLAN.—Not later than 80 days
2 before the beginning of the 2-fiscal year period covered
3 by a proposed volunteer recruitment and placement plan,
4 the council shall submit such plan to the Governor. Any
5 modification of such plan shall be published and submitted
6 to the Governor not later than 80 days before it is to be
7 effective.

8 (c) REVIEW.—

9 (1) CONDITIONS FOR APPROVAL.—The Gov-
10 ernor shall approve the volunteer recruitment and
11 placement plan (or modification thereof) unless the
12 Governor finds that—

13 (A) corrective measures for deficiencies
14 found in audits or in meeting performance
15 standards from previous years have not been
16 taken or are not being acceptably implemented;

17 (B) the council does not have the capacity
18 to administer the funds;

19 (C) there are inadequate safeguards for
20 the protection of funds received; or

21 (D) the plan (or modification) does not
22 comply with this Act or a rule of the Commis-
23 sion.

24 (2) TIME FOR REVIEW.—The Governor shall
25 approve or disapprove a volunteer recruitment and

1 placement plan (or modification) within 30 days
2 after the date that the plan (or modifica-
3 tion) is submitted.

4 (3) EFFECT OF DISAPPROVAL.—If the Governor
5 disapproves a plan, the Governor shall—

6 (A) inform the council of the reasons for
7 such disapproval;

8 (B) provide for the review of any revised
9 plan; and

10 (C) take such steps as the Governor con-
11 siders necessary to provide for the recruitment
12 and placement of members of the Civilian and
13 Senior Services in the volunteer service area
14 affected by such disapproval.

15 **SEC. 226. SERVICE SPONSORS.**

16 (a) SELECTION OF SERVICE SPONSORS.—Subject to
17 subsection (b), in placing a member of the Civilian Service
18 or Senior Service of the Citizens Corps with a public agen-
19 cy or public or nonprofit organization, the council shall
20 give primary consideration to the effectiveness of the agen-
21 cy or organization in delivering community services and
22 shall give appropriate consideration to the extent to which
23 the agency or organization is a community-based service
24 sponsor. The council shall determine the effectiveness of
25 an agency or organization on the basis of the agency's or

1 organization's demonstrated performance with regard to
2 attaining performance goals, reducing costs, and retaining
3 members of the Citizen Corps placed with such agency or
4 organization.

5 (b) PREVENTION OF WORKER DISPLACEMENT.—In
6 placing a member of the Civilian Service or Senior Service
7 of the Citizens Corps with a public agency or public or
8 nonprofit organization, the council shall take appropriate
9 measures to assure that such placement shall not result
10 in—

11 (1) the displacement of any currently employed
12 worker or position (including partial displacement
13 such as a reduction in the hours of nonovertime
14 work, wages, or employment benefits), or result in
15 the impairment of existing contracts for services or
16 collective bargaining agreements;

17 (2) such member filling a position with such
18 agency or organization when—

19 (A) any other individual is on layoff from
20 the same or any equivalent position with such
21 agency or organization; or

22 (B) the employer has terminated the em-
23 ployment of any regular employee or otherwise
24 reduced the work force of such employer with

1 the effect of filling the vacancy so created with
2 such member; or

3 (3) any infringement of the opportunities of any
4 currently employed individual for promotion.

5 (c) GRIEVANCE PROCEDURE.—

6 (1) ESTABLISHMENT.—Each State shall estab-
7 lish and maintain a grievance procedure for resolv-
8 ing complaints by regular employees or their rep-
9 resentatives that the placement of a member of the
10 Civilian Corps or Senior Corps under this Act vio-
11 lates any of the prohibitions described in subsection
12 (b).

13 (2) APPEAL.—A decision of the State under
14 such procedure may be appealed to the Commission
15 for investigation and such action as the Commission
16 may find necessary.

17 (d) PAYMENTS BY PRIVATE NONPROFIT ORGANIZA-
18 TION.—

19 (1) IN GENERAL.—The Commission may re-
20 quire a private nonprofit organization to pay to the
21 Commission an amount not to exceed \$1000 per
22 year for each member of the Civilian Service or Sen-
23 ior Service placed in a national service position with
24 such organization.

1 (2) REDUCTION IN PAYMENT.—The Commis-
2 sion may reduce the payment required under para-
3 graph (1) to reflect national service provided—

4 (A) for a period of less than a full year; or

5 (B) in the case of a member of the Senior
6 Service, as part-time service.

7 (3) SHARING PAYMENTS.—The Commission
8 shall share any payment received under paragraph
9 (1) or (2) with the State that provides the stipend
10 or wage to the member of the Citizen Corps so
11 placed with a private nonprofit organization. The
12 share paid to the State shall correspond to the
13 matching funds requirement for the State as speci-
14 fied in section 203 and adjusted to reflect any offset
15 under such section.

16 **Subtitle C—Deferred Placement of**
17 **Members of the Civilian Service**

18 **SEC. 231. DEFERRED PLACEMENT PROGRAM.**

19 The Commission shall establish a special program for
20 members of the Civilian Service under which individuals
21 who are eligible to serve in the Civilian Service of the Citi-
22 zens Corps under section 102(a) may, before placement
23 for a term of service, receive the financial assistance pro-
24 vided to members of the Civilian Service under section 303
25 to assist such individuals pursue a program of education

1 or training at an educational institution or training
2 establishment.

3 **SEC. 232. ELIGIBILITY TO PARTICIPATE IN DEFERRED**
4 **PLACEMENT PROGRAM.**

5 (a) **INDIVIDUALS ELIGIBLE.**—An individual shall be
6 eligible for selection as a participant in the Deferred
7 Placement Program if the individual—

8 (1) has received a high school diploma or its
9 equivalent and otherwise meets the eligibility
10 requirements contained in section 102(a); and

11 (2) is accepted for enrollment, or is enrolled, as
12 a full-time student—

13 (A) in an accredited (as determined by the
14 Commission) educational institution or training
15 establishment in a State; and

16 (B) in a program of education or training
17 offered by such institution or establishment and
18 approved by the Commission.

19 (b) **APPLICATION.**—An individual seeking selection
20 for the Deferred Placement Program shall submit an ap-
21 plication to participate in the Program and agree to enter
22 into a written contract (described in subsection (c))—

23 (1) to accept financial assistance provided
24 under this subtitle to assist such individual in such
25 program of education or training; and

1 (2) upon the completion of such program of
2 education or training, to serve as a member of Civil-
3 ian Service for the term of service corresponding to
4 the amount of financial assistance received.

5 (c) **ELEMENTS OF CONTRACT.**—Subject to subsection
6 (d), the written contract between the Commission and an
7 individual selected to participate in the Deferred
8 Placement Program shall contain—

9 (1) an agreement by the Commission—

10 (A) to provide the participant with finan-
11 cial assistance not to exceed \$20,000 during the
12 period in which such participant is pursuing a
13 program of education or training described in
14 subsection (a)(2)(B); and

15 (B) to accept (subject to the availability of
16 appropriated funds for carrying out this sub-
17 title) the participant into the Civilian Service of
18 the Citizens Corps; and

19 (2) an agreement by the participant—

20 (A) to accept provision of such financial
21 assistance;

22 (B) to maintain enrollment in a program
23 of education or training described in subsection
24 (a)(2)(B) until the participant completes the
25 program;

1 (C) while enrolled in such program of edu-
2 cation or training, to maintain an acceptable
3 level of academic standing (as determined under
4 rules of the Commission by the educational in-
5 stitution or training establishment offering such
6 program); and

7 (D) to serve as a member of the Civilian
8 Service for a time period equal to one year if
9 the assistance provided is \$10,000 or less or
10 two years if the assistance provided is more
11 than \$10,000; and

12 (3) a statement of the damages to which the
13 United States is entitled under section 236 for the
14 breach of the contract.

15 (d) CONTRACTS SUBJECT TO AVAILABLE FUNDS.—
16 Any financial obligation of the United States arising out
17 of a contract entered into under this section and any obli-
18 gation of the participant which is conditioned thereon, is
19 contingent upon funds being appropriated for assistance
20 under this subtitle.

21 (e) INFORMATION PROVIDED BY THE COMMISSION.—
22 In disseminating application forms and contract forms to
23 individuals desiring to participate in the Program, the
24 Commission shall include with such forms a fair summary
25 of the rights and liabilities of an individual whose applica-

tion is approved (and whose contract is accepted) by the Commission, including a clear explanation of the damages to which the United States is entitled under section 236 in the case of the breach of the contract.

(f) APPLICATION AND CONTRACT FORMS.—The application form, contract form, and all other information furnished by the Commission under this subtitle shall be written in a manner calculated to be understood by the average individual applying to participate in the Program. The Commission shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

SEC. 233. ACCEPTANCE.

(a) ACCEPTANCE.—(1) An individual shall become a participant in the Deferred Placement Program only upon the approval by the Commission of an application submitted by the individual under section 232 and the acceptance by the Commission of the contract signed by the individual under such section. Upon the acceptance of an individual to participate in the Deferred Placement Program, the Commission shall promptly provide written notice of such acceptance to such individual.

1 (b) **SELECTION PROCESS.**—The Commission shall es-
 2 tablish by rule uniform criteria for the selection on a com-
 3 petitive basis of individuals to participate in the Program.

4 **SEC. 234. LIMITATION ON THE USE OF ASSISTANCE AND RE-**
 5 **DUCTION OF SUBSEQUENT ASSISTANCE.**

6 (a) **LIMITATION ON THE USE OF ASSISTANCE.**—
 7 Financial assistance provided under this subtitle—

8 (1) may be used by the participant solely for
 9 the purposes described in section 305(d); and

10 (2) may not be used to purchase or construct
 11 a dwelling to be owned and occupied by such partici-
 12 pant as the primary residence of such participant.

13 (b) **REDUCTION OF SUBSEQUENT ASSISTANCE.**—Any
 14 financial assistance provided under section 303 to a par-
 15 ticipant in the Program after the completion of the term
 16 of service of such participant shall be reduced by the
 17 amount of assistance provided to such participant under
 18 this subtitle.

19 **SEC. 235. PLACEMENT.**

20 Upon the completion of a program of education or
 21 training described in section 232(a)(2)(B) by a participant
 22 in the Program, the Commission shall—

23 (1) refer the participant to a national service
 24 council or a Federal, State, or local agency accepting
 25 members of the Citizens Corps; and

1 (2) acting through such entity, place the partic-
2 ipant in a national service position taking into con-
3 sideration the preference and skills of the partici-
4 pant.

5 **SEC. 236. BREACH OF CONTRACT.**

6 (a) **BREACH DURING A PROGRAM OF EDUCATION OR**
7 **TRAINING.**—An individual who is selected to participate
8 in the Deferred Placement Program and who enters into
9 a written contract with the Commission under section 232
10 shall be considered to be in violation of the contract if
11 the participant—

12 (1) fails to maintain a status as a full-time
13 student;

14 (2) fails to maintain an acceptable level of aca-
15 demic standing in the educational institution or
16 training establishment in which the participant is
17 enrolled (such level to be determined by the institu-
18 tion or establishment under rules issued by the
19 Commission);

20 (3) is dismissed from such educational institu-
21 tion for disciplinary reasons;

22 (4) voluntarily terminates the program of edu-
23 cation or training described in section 232(a)(2)(B)
24 for which the participant is provided assistance

1 under such contract, before the completion of such
2 program; or

3 (5) fails to accept payment, or instructs the
4 educational institution or training establishment in
5 which the individual is enrolled not to accept pay-
6 ment, in whole or in part, of assistance provided
7 under such contract;

8 (b) REPAYMENT REQUIRED.—In lieu of any service
9 obligation arising under a contract entered into under sec-
10 tion 232, an individual described in subsection (a) shall
11 be liable to the United States for the amount which has
12 been paid to the individual, or on behalf of the individual,
13 under the contract and interest on such amount at the
14 rate described in subsection (c).

15 (c) BREACH AFTER COMPLETING A PROGRAM OF
16 EDUCATION OR TRAINING.—If (for any reason not speci-
17 fied in subsection (a)) an individual fails either to begin
18 the term of service in the Citizens Corps agreed to by the
19 individual or to complete such term of service, the United
20 States shall be entitled to recover from the individual an
21 amount determined in accordance with the formula

$$A = 3y(t-s/t)$$

22 in which—

24 (1) "A" is the amount the United States is en-
25 titled to recover;

1 (2) "Y" is the sum of the amounts paid under
2 this subtitle to or on behalf of the individual and the
3 interest on such amounts which would be payable if
4 at the time the amounts were paid they were loans
5 bearing interest at the maximum legal prevailing
6 rate, as determined by the Treasurer of the United
7 States;

8 (3) "t" is the total number of months in the in-
9 dividual's term of service; and

10 (4) "s" is the number of months of such term
11 of service served by the individual.

12 (d) PAYMENT OF AMOUNTS.—

13 (1) TIME FOR PAYMENT.—Any amount that the
14 United States is entitled to recover under this sec-
15 tion shall, within the one-year period beginning on
16 the date of the breach of the written contract (or
17 such longer period beginning on such date as speci-
18 fied by the Commission), be paid to the United
19 States.

20 (2) EXCESSIVE DELAY.—If any amount de-
21 scribed in paragraph (1) is delinquent for three or
22 more months, the Commission shall, for the purpose
23 of recovering such amount—

1 (A) utilize collection agencies contracted
2 with by the Administrator of the General
3 Services Administration; or

4 (B) enter into contracts for the recovery of
5 such damages with collection agencies selected
6 by the Commission.

7 (3) CONDITIONS OF COLLECTION CON-
8 TRACTS.—Each contract referred to in paragraph
9 (2) shall provide that the contractor will submit to
10 the Commission not less than once every 180 days
11 a status report on the success of the contractor in
12 collecting such damages. Section 3718 of title 31,
13 United States Code, shall apply to any such contract
14 to the extent not inconsistent with this subsection.

15 (e) DISCLOSURE OF DELINQUENT PAYMENTS.—To
16 the extent not otherwise prohibited by law, the Commis-
17 sion shall disclose to all appropriate credit reporting agen-
18 cies information relating to amounts of more than \$100
19 that—

20 (1) the United States is entitled to recover
21 under this section; and

22 (2) are delinquent by more than 60 days or
23 such longer period as is determined by the
24 Commission.

1 Subtitle D—Administration of the
2 Citizens Corps With Regard to
3 Service in the Armed Forces

4 SEC. 241. ADMINISTRATION OF THE CITIZENS CORPS WITH
5 REGARD TO SERVICE IN THE ARMED FORCES.

6 (a) RESPONSIBILITY OF SECRETARY OF DEFENSE.—

7 The Secretary of Defense shall be responsible for admin-
8 istering the Citizens Corps with regard to service by mem-
9 bers of the Citizens Corps in the Armed Forces.

10 (b) RULEMAKING.—Not later than 60 days after the
11 date of the enactment of this Act, the Secretary shall issue
12 rules to carry out this subtitle.

13 SEC. 242. DEFERRED ENLISTMENT.

14 (a) SENIOR RESERVE OFFICERS' TRAINING CORPS
15 PROGRAM.—The Secretary concerned, in consultation
16 with the Secretary of Defense, shall expand the Senior Re-
17 serve Officers' Training Corps program under chapter 103
18 of title 10, United States Code, so that a certain number
19 of the individuals (as determined by the Secretary con-
20 cerned) who are eligible to enlist for service in the Armed
21 Forces as a member of the Citizens Corps under section
22 102(b) may, before performing a service obligation se-
23 lected under section 103(b), receive the financial assist-
24 ance provided to members of the Citizens Corps under sec-
25 tion 304 to assist such individuals pursue a program of

1 education or training at an educational institution or
2 training establishment.

3 (b) OPERATION OF PROGRAM.—The Secretary con-
4 cerned shall operate the Senior Reserve Officers' Training
5 Corps Program with regard to individuals referred to in
6 subsection (a) in the manner provided in subtitle C.

7 **SEC. 243. REPORTS.**

8 (a) REQUIRED.—On or before May 15 of each cal-
9 endar year, the Secretary of Defense shall submit to the
10 President a report describing the operation of the Citizen
11 Corps with regard to service in the Armed Forces and the
12 activities of the Secretary in administering such service
13 during the fiscal year ending September 30 of the preced-
14 ing calendar year, and the President shall transmit such
15 report to the Congress.

16 (b) CONTENT OF REPORT.—(1) Each report shall in-
17 clude a comprehensive and detailed description of the op-
18 erations, activities, financial condition, and accomplish-
19 ments of the Citizens Corps with regard to service in the
20 Armed Forces during the fiscal year covered by such re-
21 port and such recommendations as the Secretary considers
22 appropriate.

23 (2) In the first 5 reports submitted under subsection
24 (a), the Secretary shall specify—

1 (A) the anticipated number of national service
2 positions that will be available in the Armed Forces
3 for members of the Citizens Corps in the fiscal year
4 beginning in the calendar year in which such report
5 is submitted; and

6 (B) the anticipated cost of operating the Citi-
7 zens Corps with regard to service in the Armed
8 Forces for such fiscal year.

9 **TITLE III—BENEFITS FOR PAR-**
10 **TICIPATING IN THE CITIZENS**
11 **CORPS**

12 **SEC. 301. STIPEND AND SUPPORT SERVICES FOR MEMBERS**
13 **OF THE CIVILIAN SERVICE AND SENIOR**
14 **SERVICE.**

15 (a) CIVILIAN SERVICE.—

16 (1) STIPEND.—The State shall provide a sti-
17 pend of \$100 per week to each member of the Civil-
18 ian Service of the Citizens Corps performing service
19 in the State (except members placed with a Federal
20 agency) while such member is in training and pro-
21 viding full-time service during the term of service of
22 such member. If a member of the Civilian Service is
23 placed with a Federal agency, such agency shall be
24 responsible for providing a stipend of \$100 per week
25 to such member while such member is in training

1 and providing full-time service with such agency
2 during the term of service of such member.

3 (2) HEALTH COVERAGE.—The Commission
4 shall provide each member of the Civilian Service of
5 the Citizens Corps with health insurance.

6 (3) OTHER SUPPORT.—The Commission may
7 provide such other assistance as the Commission
8 considers necessary and appropriate for a member of
9 the Civilian Service of the Citizens Corps to carry
10 out the service obligation of such member.

11 (b) SENIOR SERVICE.—

12 (1) HOURLY WAGE.—The State or Federal
13 agency, as the case may be, shall pay to each mem-
14 ber of the Senior Service performing service in the
15 State or with the agency an hourly wage as deter-
16 mined by rule by the Commission.

17 (2) OTHER SUPPORT.—The Commission may
18 provide such other assistance as the Commission
19 considers necessary and appropriate for a member of
20 the Senior Service to carry out the service obligation
21 of such member.

22 **SEC. 302. COMPENSATION FOR MEMBERS OF THE CITIZENS**
23 **CORPS SERVING IN THE ARMED FORCES.**

24 (a) AMOUNT OF COMPENSATION.—Notwithstanding
25 any other provision of law, a member of the Citizens Corps

1 serving in the Armed Forces shall receive basic pay, basic
2 allowance for subsistence, basic allowance for quarters at
3 66 percent of the rate applicable to other members of the
4 Armed Forces with the same pay grade and years of
5 service.

6 (b) LIMITATIONS.—A member of the Citizens Corps
7 serving in the Armed Forces, or a graduate of such serv-
8 ice, shall not be eligible to receive benefits under chapters
9 106, 107, and 109 of title 10, United States Code, or
10 chapters 30, 32, 34, 36, or 37 of title 38, United States
11 Code, as a result of such service.

12 **SEC. 303. EDUCATIONAL AND HOUSING BENEFITS FOR**
13 **MEMBERS OF THE CIVILIAN SERVICE OF THE**
14 **CITIZENS CORPS.**

15 (a) AMOUNT OF FINANCIAL ASSISTANCE.—An indi-
16 vidual who successfully completes a term of service as a
17 member of the Civilian Service of the Citizens Corps shall
18 be eligible to receive financial assistance pursuant to sec-
19 tion 305 or 306 in an amount not to exceed \$10,000 for
20 each year of such term to assist such individual—

21 (1) pursue a program of education or training
22 at an educational institution or training establish-
23 ment; or

1 (2) purchase or construct a dwelling to be
2 owned and occupied by such individual as the
3 primary residence of such individual.

4 (b) PARTIAL COMPLETION OF TERM OF SERVICE.—

5 If the Commission releases an individual from completing
6 a term of service in the Civilian Service for compelling per-
7 sonal circumstances for just cause shown by such member,
8 the Commission may provide such individual with a por-
9 tion of the financial assistance specified in subsection (a)
10 corresponding to the amount of the service obligation
11 completed by such individual.

12 **SEC. 304. EDUCATIONAL AND HOUSING BENEFITS FOR**
13 **MEMBERS OF THE CITIZENS CORPS SERVING**
14 **IN THE ARMED FORCES.**

15 (a) ACTIVE DUTY IN THE ARMED FORCES.—

16 (1) ELIGIBILITY.—A member of the Citizens
17 Corps serving in the Armed Forces pursuant to sec-
18 tion 103(b)(1) who is released from active duty after
19 two years of service (characterized by the Secretary
20 concerned as honorable service) on active duty shall
21 be eligible for the financial assistance specified in
22 paragraph (2) on the condition that—

23 (A) the member agrees to complete the
24 service obligation selected by such member; and

1 (B) such further service is characterized by
2 the Secretary concerned as honorable service.

3 (2) AMOUNT OF BENEFITS.—The financial as-
4 sistance referred to in paragraph (1) shall be pro-
5 vided pursuant to section 305 or 306 in an amount
6 not to exceed \$24,000 to assist such member—

7 (A) pursue a program of education or
8 training at an educational institution or train-
9 ing establishment; or

10 (B) purchase or construct a dwelling to be
11 owned and occupied by such individual as the
12 primary residence of such individual.

13 (b) SERVICE IN THE SELECTED RESERVE.—

14 (1) ELIGIBILITY.—A member of the Citizens
15 Corps serving in a reserve component of the Armed
16 Forces pursuant to section 103(b)(2) is eligible for
17 the financial assistance specified in paragraph (2)—

18 (A) after the member serves one year in
19 the Selected Reserve during which the member
20 participates satisfactorily in training as pre-
21 scribed by the Secretary concerned; and

22 (B) on the condition that the member
23 agrees to complete the service obligation se-
24 lected by such member and such service is char-

1 acterized by the Secretary concerned as honor-
2 able service.

3 (2) AMOUNT OF BENEFITS.—The financial as-
4 sistance referred to in paragraph (1) shall be pro-
5 vided pursuant to section 305 or 306 in an amount
6 not to exceed \$12,000 to assist such member—

7 (A) pursue a program of education or
8 training at an educational institution or train-
9 ing establishment; or

10 (B) purchase or construct a dwelling to be
11 owned and occupied by such individual as the
12 primary residence of such individual.

13 (c) PARTIAL COMPLETION OF TERM OF SERVICE.—
14 If the Secretary of Defense releases a member of the Citi-
15 zens Corps from completing a service obligation in the
16 Armed Forces with an honorable discharge, the Secretary
17 of Veterans Affairs may provide such member with a por-
18 tion of the financial assistance such individual would have
19 otherwise been entitled to corresponding to the amount of
20 the service obligation completed by such individual.

21 **SEC. 305. PROVISION OF EDUCATIONAL BENEFITS.**

22 (a) CIVILIAN SERVICE.—The Commission (in con-
23 sultation with the Secretary of Veterans Affairs) shall ad-
24 minister the provision of financial assistance under section
25 303 for individuals pursuing a program of education or

1 training at an educational institution or training establish-
2 ment.

3 (b) SERVICE IN THE ARMED FORCES.—The Sec-
4 retary of Veterans Affairs (in consultation with the Com-
5 mission) shall administer the provision of financial assist-
6 ance under section 304 for individuals pursuing a program
7 of education or training at an educational institution or
8 training establishment.

9 (c) METHOD OF PROVIDING ASSISTANCE.—The
10 Commission and Secretary shall administer the provision
11 of educational benefits to an individual who is eligible for
12 financial assistance under section 303 or 304 in the man-
13 ner provided in sections 1663, 1670, 1671, 1673, 1674,
14 1676, 1682(g), and 1683 of title 38, United States Code,
15 and in subchapters I and II of chapter 36 of such title.

16 (d) USE OF ASSISTANCE.—Assistance provided under
17 section 303 or 304 as educational benefits may be used—

18 (1) to pay tuition, fees, books, supplies, equip-
19 ment, room and board, and other costs determined
20 by the Commission to be necessary to accomplish a
21 program of education or training at an educational
22 institution or training establishment; or

23 (2) to repay student loans that are—

24 (A) incurred by or on behalf of the individ-
25 ual eligible to receive the assistance; and

1 (B) insured or guaranteed under part B of
2 title IV of the Higher Education Act of 1965
3 (20 U.S.C. 1071 et seq.) or made under part E
4 of such title (20 U.S.C. 1087 et seq.).

5 **SEC. 303. PROVISION OF HOUSING BENEFITS.**

6 (a) **CIVILIAN SERVICE.**—The Commission (in con-
7 sultation with the Secretary of Veterans Affairs) shall—

8 (1) establish a program by which an individual
9 eligible for financial assistance under section 303
10 may use all or part of such assistance to purchase
11 or construct a dwelling to be owned and occupied by
12 the individual as the primary residence of such indi-
13 vidual; and

14 (2) monitor the implementation of such pro-
15 gram.

16 (b) **SERVICE IN THE ARMED FORCES.**—The Sec-
17 retary of Veterans Affairs (in consultation with the
18 Commission) shall—

19 (1) establish a program by which an individual
20 eligible for financial assistance under section 304
21 may use all or part of such assistance to purchase
22 or construct a dwelling to be owned and occupied by
23 the individual as the primary residence of such
24 individual; and

1 (2) monitor the implementation of such pro-
2 gram.

3 SEC. 307. TIME LIMITATION ON THE USE OF ASSISTANCE.

4 (a) IN GENERAL.—No assistance under section 303
5 or 304 may be provided an individual after the end of the
6 10-year period beginning on the date the term of service
7 of such individual is completed.

8 (b) EXCEPTION.—Subsection (a) shall not apply if
9 the Secretary of Veterans Affairs or the Commission, as
10 the case may be, determines on an individual basis that
11 an individual was unavoidably prevented from using such
12 assistance during such time period.

13 SEC. 308. EXCLUSION OF ASSISTANCE FROM GROSS IN-
14 COME.

(a) EXCLUSION.—For purposes of section 61 of the Internal Revenue Code of 1986 (26 U.S.C. 61), in the case of an individual, gross income shall not include any amount received as assistance under section 303 or 304.

(b) NEED ANALYSIS FOR STUDENT ASSISTANCE.—

Notwithstanding subsection (a), amounts available as assistance under section 303 or 304 shall be considered when determining family contribution for purposes of a financial need analysis under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

1 **SEC. 309. RECOUPMENT OF ASSISTANCE.**

2 (a) **FAILURE TO COMPLETE SERVICE OBLIGATION IN**
3 **THE ARMED FORCES.**—The Secretary of Veterans Affairs
4 shall establish by rule a system to recoup financial assist-
5 ance provided under section 304 and used by a member
6 of the Citizens Corps serving in the Armed Forces or a
7 reserve component of the Armed Forces in cases in which
8 the individual fails to honorably complete the required
9 service obligation.

10 (b) **CALCULATION AND COLLECTION.**—The amount
11 recouped under subsection (a) shall be calculated and
12 collected in the manner provided in section 236.

13 **SEC. 310. REPORTS.**

14 (a) **REQUIRED.**—(1) The Secretary of Veterans Af-
15 fairs and the Commission shall submit to the Congress
16 at least once every two years a joint report on the provi-
17 sion of financial assistance under sections 303 and 304.

18 (2) The first report required by paragraph (1) shall
19 be submitted not later than January 1, 1994.

20 (b) **CONTENTS OF REPORT.**—Each report submitted
21 under subsection (a) shall include—

22 (1) an assessment of the extent to which the fi-
23 nancial assistance provided under sections 303 and
24 304 is adequate to induce individuals to serve in the
25 Citizens Corps and complete their terms of service;

1 (2) the amount of such assistance utilized dur-
2 ing the period covered by such report; and

3 (3) such recommendations for legislative
4 changes regarding the provision of such assistance
5 to members of the Citizens Corps and individuals
6 who have successfully completed their terms of serv-
7 ice in the Citizens Corps as the Secretary and
8 Commission consider appropriate.

9 **TITLE IV—MISCELLANEOUS**
10 **PROVISIONS**

11 **SEC. 401. EDUCATIONAL AND HOUSING BENEFITS FOR PAR-**
12 **TICIPANTS IN THE PEACE CORPS AND VISTA**

13 (a) **BENEFITS ALLOWED.**—Subject to subsection (b),
14 an individual who is not a member of the Civilian Service
15 of the Citizens Corps but who successfully completes a
16 term of service in the Peace Corps or VISTA after the
17 effective date of this Act shall be entitled to financial as-
18 sistance under section 303 in the same manner as a mem-
19 ber of the Civilian Service.

20 (b) **REDUCTION OF BENEFITS.**—The Commission
21 shall reduce the amount of financial assistance available
22 to a former Peace Corps or VISTA volunteer under sub-
23 section (a) to reflect the amount of compensation received
24 by such volunteer over and above the stipend provided to
25 members of the Civilian Service.

1 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to the Com-
3 mission to carry out this Act:

4 (1) \$ _____ for fiscal year 1994.

5 (2) \$ _____ for fiscal year 1995.

6 (3) \$ _____ for fiscal year 1996.

7 (4) Such sums as may be necessary for each
8 fiscal year thereafter.

9 **SEC. 403. EFFECTIVE DATE.**

10 This Act shall take effect on October 1, 1993.

○

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

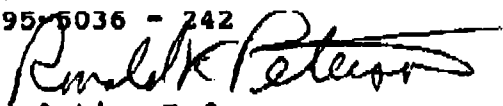
April 27, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-202

TO: Legislative Liaison Officer -

AGRIC-CR - Robin Rorapaugh (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
EPA - Thomas C. Roberts - (202)260-5414 - 326
NEC - Sonia Mathews - (202)456-6722 - 429
CEA - Francine Obermiller - (202)395-6036 - 242

FROM: RONALD K. PETERSON (for) 
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
William PALMER (395-3164)

SUBJECT: TVA Proposed Testimony on Clean Water
Watershed Management

DEADLINE: 10:00 AM April 30, 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
T. Hunt
P. Barr
K. McGinty
G. Simon

7 pgs

APR-26-1993 13:59

FROM TVA-GOV'T REL. WASH.

TO

3953691

P.02

REMARKS BY RALPH H. BROOKS
VICE PRESIDENT OF WATER MANAGEMENT
TENNESSEE VALLEY AUTHORITY

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
MAY 8, 1993 - WASHINGTON, D.C.

Clean Water Act Reauthorization

Thank you for the opportunity to discuss TVA's approach to improving water quality in the Tennessee Valley. The information that I offer draws upon almost 60 years of TVA's experiences in building and managing the Tennessee River system. The Tennessee is our Nation's fifth largest river system, consisting of 39 dams, 600,000 acres of lakes, and 11,000 miles of shoreline.

Our approach to improving water quality also draws upon six decades of working in partnership with the people of the Tennessee Valley to protect and improve the river that serves as the water supply for 85 cities and towns along its 680-mile-long channel. The public is generally aware that the Tennessee River has some water quality problems, and they look to TVA's stewardship of the river to address those problems.

Previous clean water legislation focused on monitoring and standards for known discharge points, such as industrial sites and wastewater treatment plants. However, some compliance issues remain. These issues primarily involve communities that are not large enough to afford conventional wastewater treatment plants. In the Tennessee Valley, we have about 1,100 communities of 3,000 people or less that fall into that category.

The other major contributor to water quality problems in the Tennessee Valley is the cumulative effect of highly dispersed nonpoint sources, such as natural runoff from both urban and rural areas. The runoff collects polluting materials from such diverse sources as livestock and agricultural operations and shopping mall parking lots.

TVA has no regulatory authority, so we developed a cooperative problem-solving approach to meet the challenges of nonpoint source pollution. This approach was successfully applied to several areas in the Tennessee drainage basin. We worked with state and federal agencies, landowners, interest groups, and the general public to identify local water quality problems and to find solutions.

The cooperative approach has become our Clean Water Initiative. Through the Clean Water Initiative we are expanding our efforts to cover all watersheds that contribute flow to the Tennessee River. Our initiative is the framework that our region needs to make the Tennessee River System the cleanest, most productive commercial river system in the Nation by the year 2000.

I will outline the components of our Clean Water Initiative and discuss some potential difficulties that you might help us avoid. With your assistance, this approach could become a model to benefit other regions of our Nation.

Chris Eckl 479-4412

-2-

A COOPERATIVE PROBLEM-SOLVING APPROACH

The Clean Water Initiative is the result of a commitment that TVA made in August 1992 to improve the water quality of the Tennessee River. The initiative incorporates comprehensive water quality monitoring; novel public communication methods; site-specific River Action Teams; a total watershed focus; targeting of significant pollutant sources; cost-sharing partnerships; and, where appropriate, research to develop new water quality technologies.

Monitoring -- The crucial component--a comprehensive, long-term water quality monitoring program--had been developed and implemented in 1990. Using what is possibly the most comprehensive monitoring program in the Nation, our scientists monitor conditions at key locations on most of the 35 lakes in the Tennessee River System and on major streams. They conduct more than 8,000 tests annually on fish, water, and sediment samples. Our program combines conventional water quality monitoring and ecological monitoring. We keep tabs on a broad range of physical and chemical variables in sediments, fish, and water. We also monitor organisms that live in the water to help identify chronic low levels of pollution or intermittent pollution episodes that could otherwise go undetected.

Communication -- The public needs accessible information to understand water quality problems and focus their attention on possible solutions. To address this need, we created the RiverPulse publication. RiverPulse was a milestone because it presents complex technical information about the water quality of TVA lakes in an easy-to-understand format. Based on monitoring results, RiverPulse gave answers to the three most common questions asked by TVA river system users: Where is it safe to swim? Are the fish safe to eat? Are the conditions adequate for aquatic life?

RiverPulse helps people who are interested in water quality set river cleanup goals and track progress toward meeting them. If we want river system users and the public to get involved in river cleanup, we must help them understand what the problems are.

River Action Teams -- On January 20, 1993, we announced the creation of three River Action Teams that will coordinate the work to solve problems identified by our monitoring system. Eventually, we will have 12 River Action Teams assigned to specific watersheds in the Valley. A team consists of about six TVA experts in environmental science and engineering, aquatic biology, and other disciplines. Their job is to work in a watershed with government agencies, interest groups, landowners, and the general public. They assess the status of water resources, identify the root causes of problems, and develop and help implement projects to resolve the problems. They also identify additional basic or applied research needed to solve specific water quality problems. Projects will focus on pollution cleanup where water use is impaired and on protection and restoration of aquatic habitat.

-3-

River Action Teams will be formed around watersheds because the quality of water resources is primarily affected by human activities on the land that drains into each stream, river, and lake. In the next few years, we anticipate forming 12 teams--one team to work in each of the six major tributaries to the Tennessee River, and one team to work in each of six major segments of the Tennessee River. Our watersheds are from 2000 to 4000 square miles in area. They are large enough to allow watershed, reservoir, and tailwater interactions to be captured, yet not too large to be addressed by a six-member team.

Like many other areas of the country, the most significant problems affecting these watersheds are nonpoint sources of pollution--animal wastes, plant nutrient and pesticide runoff, and erosion from farms, shoreline development, abandoned mines, roads, and construction sites. Nonpoint sources can also cause significant problems for streams in urban areas. Stormwater from the hundreds of small municipalities and entities such as shopping centers is also a problem. Poor water quality is also produced by pollution sources that are regulated, but where compliance is often costly and complicated. These include stormwater overflows from sewer systems and wastewater from small communities that cannot afford conventional treatment technology. Low-cost treatment options must be developed and applied to help solve these problems.

It is this project development and implementation process that will be the primary work of the teams, occupying 75 percent or more of their time. Having identified an existing or potential problem in the watershed, team members begin assembling a partnership of agencies, communities, leaders, and the public to formulate and carry out a solution.

Targeting -- The list of problems, issues, and needs in a watershed is potentially endless and can forestall the best of intentions. Dispersed area-wide concern must be transformed into focusing on clearly defined site-specific problems--something that will bring our potential partners to the table. One major team responsibility will be to maintain that focus. River Action Teams must focus on high value, solvable problems.

The key objective for River Action Team members is to persuade project partners that solving the river cleanup problem in their area is important to meeting their own needs and the needs of the community in which they live. They need to convey the idea that environmental improvements produce both social and economic benefits to the landowners and the larger community.

Cost Sharing -- Much of the pollution in our area comes from nonpoint sources such as small farms, rural roads in poor counties, and low-income urban neighborhoods. These landowners lack the financial resources to correct by themselves the nonpoint pollution originating from their properties. We know from our experiences that voluntary cleanup efforts can be successful if sufficient financial incentives are provided to attract landowner participation. For example, cleanup projects that provided 75 percent or greater cost share had the greatest voluntary participation by landowners.

-4-

Some funding for cleanup of nonpoint sources is available through existing federal and state cost-share programs; however, there is not enough funding to get the job done. Additional sources must be found if we are to be successful.

WILL WE SUCCEED?

Based on our past experiences in several watersheds in the Tennessee Valley, we are convinced that our cooperative problem-solving approach will be successful. A brief discussion of the Bear Creek Floatway project should help to clarify how the process will work.

The river below Bear Creek Dam flows through a beautiful gorge and offers whitewater rapids that attract rafters and canoeists from a wide area. But in 1984 the floatway was closed to recreational use because of high fecal coliform concentrations. Aerial photographs and targeted monitoring showed that the main problem was lack of adequate animal waste management on many small farms.

It took a cooperative effort to clean up the Bear Creek Floatway. TVA provided expertise in monitoring water quality, analyzing aerial photographs, and targeting priority areas. The Soil Conservation Service provided expertise in working with livestock operators to design and install the waste management facilities. The Agricultural Stabilization and Conservation Service provided expertise in developing contracts with the operators and arranging for payment of cost-share monies. The Bear Creek Floatway Advisory Committee provided the guidance for educating the operators and inspecting installed systems. And, finally, participation of landowners was needed to ensure the pollution sources would be cleaned and maintained.

Agencies and local farmers halted nonpoint source pollution from livestock operations and reopened the recreational floatway. The landowners and recreationists benefited--and it also eliminated a source of pollution that affected the Tennessee River.

What we will be doing with River Action Teams is applying our experiences at Bear Creek (and other areas) on a larger scale--working with an entire watershed at once. We realize that there are limits on what we can do with a cooperative program. To complete our mission we will probably need help from you.

New legislative provisions are needed that encourage and support cooperative watershed approaches.

States need help -- States are overwhelmed with existing regulatory programs and have little time to devote to labor-intensive cooperative watershed efforts to control nonpoint sources. Steps must be taken to reduce their regulatory burden.

APR-26-1993 14:01

FROM TVA-GOV'T REL, WASH.

TO

3955691

P.06

-5-

Dischargers need more incentive to participate -- Although TVA is adopting a cooperative approach between agencies and landowners, there are times when landowners will not participate even with an excellent cost-share incentive. We have seen a cooperative watershed cleanup effort fail to meet water quality objectives because one or two major sources refused to participate. For these situations, we need a regulatory structure and federal financial assistance programs that encourage cooperative watershed approaches in critical areas.

Problem solvers need a better understanding of chemical contamination of fish flesh -- Protection of TVA lakes will be one of the major concerns of the Clean Water Initiative. In the Tennessee Valley we have eight lakes with fish consumption advisories due to chemical contamination. Some of these advisories have been in effect for almost a decade. Today, we are no closer to understanding what it will take to get contamination reduced to a safe level than when the advisories were first made.

The Tennessee River System is not unique in this matter. Contaminants such as PCB, chlordane, DDT, dioxin, and mercury occur in many lakes throughout the Nation. We need more emphasis in the area of basic research to help understand the cycling of these substances in lakes. Methods for establishing risk levels associated with eating contaminated fish also need to be improved.

SUMMARY

TVA believes it has a cooperative problem-solving approach that will work anywhere, and we plan to demonstrate this over the next six years. Our program emphasizes water quality monitoring, public communication, River Action Teams, targeting of problems, and cost sharing. We are seeking your assistance through revisions to the Clean Water Act that would help achieve effective state involvement and participation by all polluters.

River cleanup is expensive. TVA's experiences indicate that cooperative problem solving at the watershed level is the best approach. It provides an opportunity for development of low-cost, site-specific solutions. Innovative methods can be tried that take advantage of local conditions. Local cost sharing ensures careful management of funds.

2405A

TOTAL P.06

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

November 12, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1681

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3086 - 324
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
STATE - Julia C. Norton - (202)647-4463 - 225
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
EPA - Thomas C. Roberts - (202)260-5414 - 326
NEC - Sonyia Matthews - (202)456-6722 - 429
OSTP - Chris Clary - (202)456-7116 - 288
GSA - William R. Ratchford - (202)501-0563 - 237

FROM: JAMES J. JUKES (for) *Ji-*
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: Proposed Report RE: S 1636, Marine Mammal
Protection Act Authorizations, FYs 94-98

DEADLINE: NOON November 16, 1993

COMMENTS: The Marine Mammal Commission advises that
congressional action could occur before the recess.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

**Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

CC:
Howard Paster
Katie McGinty
C. Cerda
Ken Schwartz
Harry Meyers
Jeff Payne
Scott Cameron
Bill McQuaid

MARINE MAMMAL COMMISSION
1825 CONNECTICUT AVENUE, N.W. #512
WASHINGTON, DC 20009

16 November 1993

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Senator Hollings:

The Senate and the House of Representatives are currently considering separate bills (S. 1636 and H.R. 2760) to re-authorize and amend the Marine Mammal Protection Act. The proposed amendments focus primarily on establishing a new regime to govern the taking of marine mammals incidental to commercial fishing operations. I would like to call your attention to a major problem with the introduced legislation.

The bills incorporate several elements of a proposal negotiated by representatives of the fishing industry and a segment of the environmental community. Among these elements is a fundamental shift in the burden of proof applicable to taking marine mammals. With the exception of the interim exemption for commercial fisheries enacted in 1988, the Marine Mammal Protection Act has consistently required those seeking authority to take marine mammals to show that their actions will not adversely affect marine mammal stocks. Under the negotiated proposal and the pending legislation, this burden would be switched, allowing commercial fishermen to take marine mammals unless and until the National Marine Fisheries Service can demonstrate that the taking is having adverse effects and promulgates regulations to prevent or reduce the taking.

This proposed change is not insignificant; it is a profound philosophical and practical change in the basic structure of the Act. The legislative history of the Act is replete with references to the appropriateness of the burden placed on those requesting authority to take marine mammals. The 1972 Report from the House Committee on Merchant Marine and Fisheries notes, for example, that:

"...the bill involves a number of basic concepts and techniques:

"...In every case the burden is placed upon those seeking permits to show that the taking should be allowed and will not work to the disadvantage of the species or stocks of animals involved. If that burden is not carried — and it is

2

by no means a light burden — the permit may not be issued. The effect of this set of requirements is to insist that the management of the animal populations be carried out with the interests of the animals as the primary consideration."

The shift in the burden of proof also runs counter to the charge given the Marine Mammal Commission in 1988 to develop recommended guidelines for the new regime to govern incidental taking. Section 114(1)(1) of the Act, requires, among other things, that the guidelines "be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in [the] Act." Shifting the burden of proof from resource users to the agencies responsible for conserving those resources is contrary to both sound principles of wildlife management and the purposes and policies of the Act.

A second concern with the proposed legislation is the requirement that an incidental taking plan be developed, and an incidental take team be established, for each stock determined to be a critical stock. While the focus of the incidental take plans is fishery-related mortality and serious injury, these efforts would, to a certain extent, duplicate efforts by the Secretary and conservation/recovery teams to develop conservation or recovery plans. Furthermore, in those cases where only an incidental taking plan need be prepared (i.e., if the stock is critical but not depleted, threatened, or endangered) it is appropriate to address a broader range of conservation issues than would be included in the plan. In sum, divorcing conservation/recovery planning from incidental take planning is illogical and will result in redundant and therefore unnecessarily expensive efforts.

Please let me know if you would like the Commission to provide additional thoughts on alternative approaches for authorizing incidental taking which would provide the necessary degree of protection to marine mammal populations that Congress might wish to consider.

Sincerely,

John R. Twiss, Jr.
Executive Director

Attachment

Comments on
the 5 November 1993 Staff Working Draft
of
A Bill to Authorize Marine Mammal Protection Act Appropriations
and to Improve the Program to Reduce the Incidental Taking of
Marine Mammals during the Course of Commercial Fishing
Operations, and for Other Purposes

The basic purposes of the draft bill are to reauthorize the Marine Mammal Protection Act and to establish a new regime to govern the mortality and serious injury of marine mammals incidental to commercial fishing operations in U.S. waters. The regime that would be established by the Bill seems workable and, with several possible exceptions, appears to be generally consistent with the guidelines set forth in section 114(l)(1)(A), (B) and (C) of the Act.

One possible exception is sub-section (d)(7) of proposed section 118 which, as drafted, would require that the Secretary "take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals" before prescribing emergency regulations, even in cases where failure to prevent or reduce mortality and serious injury incidental to commercial fishing operations might result in the depletion or extinction of the affected species or population stock. Other possible exceptions are sub-section (h) of section 118 which, while recognizing that data reported by fishermen may not be accurate, gives the Secretary authority to establish an observer program but does not require that an observer program be established; and paragraph 3 of section 9 which apparently would allow commercial and recreational fishermen and others to harass severely endangered species such as the Hawaiian monk seal and Florida manatee when such taking clearly could have adverse effects.

On a related point, it should be recognized that the proposed legislation would change two of the basic tenets of the Marine Mammal Protection Act -- namely that (1) taking, except taking for purposes of scientific research or species enhancement and by Alaska Natives for subsistence and handicraft purposes, cannot be permitted unless the affected population has been determined to be at its optimum sustainable population level and the authorized taking would not reduce it below that level; and (2) the individual or industry wanting to take marine mammals is responsible for reasonably showing that the affected species or population stock is within its optimum sustainable range and will not be "disadvantaged" by the proposed taking. In this regard, it is particularly important to recognize that the transition rule (Section 11), in effect, would allow unlimited and unregulated taking of marine mammals incidental to commercial fishing operations until the National Marine Fisheries Service shows that the taking is inconsistent with the intents and provisions of either the Endangered Species Act or the Marine

Mammal Protection Act, and promulgates regulations to prevent or reduce the taking.

The following specific comments identify a variety of uncertainties and ways that certain provision of the legislation might be strengthened or clarified.

Specific Comments

Section 2 (Purposes): Point 5 of this section (p. 2) appears to use the term "fishery-marine mammal interactions" as a synonym for the lethal taking and serious injury of marine mammals incidental to commercial fishing operations. Likewise, other provisions of the draft legislation appear to use the term "fishery-marine mammal interactions" as a synonym for mortality and injury of marine mammals incidental to commercial fishing operations. Interactions may involve more than incidental mortality and injury -- e.g., non-lethal taking, competition for prey, and damage of fishing gear and caught fish. Therefore, unless the intent is to make certain provisions applicable to a broader range of issues, it might be useful to define the term "fishery-marine mammal interactions" as used in the legislation, or to replace the term, wherever it appears, with a specific reference to "mortality and serious injury incidental to commercial fishing operations."

In this same context, the text uses the term "lethal take" in some places without reference to "injury." It is not clear whether this is intentional -- i.e., whether injury is not to be considered when the text refers only to lethal taking.

Page 4, lines 18 through 25: The intent of this section would be clearer if the article "a" in line 25 were changed to "an" and the words "incidental take" were inserted before the word "statement."

Pages 4-5, Section 4 (Incidental Taking of Endangered and Threatened Species): This provision would allow the taking of endangered and threatened marine mammals as long as the Secretary determined that the taking would not jeopardize the continued existence of the affected species. The jeopardy standard is substantially weaker than the standard presently set forth in the Marine Mammal Protection Act and implementing regulations promulgated by the National Marine Fisheries Service.

Section 101(a)(5) of the Act directs the Secretary to authorize the taking of small numbers of marine mammals (including endangered and threatened species) incidental to activities other than commercial fishing if the Secretary determines that the taking will have a "negligible impact" on the species or stock. Applicable regulations define "negligible

impact" to mean: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In contrast, regulations implementing section 7 of the Endangered Species Act define "jeopardize the continue existence of [a species]" to mean "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species."

Unless the intent is to circumvent the goal of obtaining optimum sustainable populations, a higher threshold than the jeopardy standard is needed. That is, a "negligible impact" or similar standard designed to prevent significant delays in recovery of endangered and threatened marine mammal populations is needed.

The provision relating to public notice and comment also should be clarified. As drafted, it appears that the public comment would be directed at whether an incidental take statement had been issued under section 7(b)(4) of the Endangered Species Act. What should be provided is an opportunity to comment on the Secretary's determination that the incidental taking is not likely to jeopardize the continued existence of any listed species and on any reasonable and prudent measures identified to minimize the impact of the taking and the applicable terms and conditions.

Under the proposed amendment to section 101(a)(4), authority to incidentally take threatened and endangered species apparently would be limited to "citizens of the United States." The rationale for this limitation is not self-evident. It could seriously disadvantage certain fishermen (e.g., resident aliens) who currently participate in domestic fisheries, including those that take listed marine mammals. Using the rationale of the Kokechik decision, foreign nationals may be precluded from participating in fisheries with a demonstrated likelihood of taking listed species. Similarly, this requirement could impair the Secretary's ability to authorize foreign fishing within the U.S. Exclusive Economic Zone pursuant to the Magnuson Act.

The citizenship requirement also underscores the lack of specificity as to how authorizations under proposed section 101(a)(4) would be issued. Would authorizations be issued to individual fishermen, to all fishermen participating in a particular fishery, or to fishermen participating in all fisheries that might take a certain listed species? If authorizations are to be issued on a fishery-wide or species basis, how will determinations of citizenship be made? Irrespective of the citizenship requirement, the process by which

authorizations would be made, and the entities to which authorizations would be issued, need to be clarified.

Page 5, line 7: Reference to section "104(a)(5)" should be to section 101(a)(5).

Page 5, Sec. 5. (Conservation Plans): As drafted, the proposed addition to section 115(b) could be interpreted to mean that conservation plans developed to guide recovery of species or population stocks designated as depleted under the Marine Mammal Protection Act should (1) ignore any mortality or injury of the species or stock in question incidental to commercial fishing operations; and (2) not consider any other factors related to the conservation of the stock (e.g., research or habitat protection) other than non-incidental taking. Neither of these makes sense. If the intents are to ensure that there is no duplication or inconsistency between conservation plans and incidental taking plans, the provision would make more sense if it were redrafted to read something like the following --

"(4) If the Secretary determines that an incidental taking plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock identified as a critical stock under section 118(c), that plan shall take into account and be integrated with any conservation plan required under this sub-section for such stock."

Page 5, lines 24-25: As we understand it, this proposed addition to the Act is intended to deal only with mortality and serious injury of marine mammals incidental to commercial fishing operations. That is, it is not intended, nor does it include provisions, to deal with food chain effects or taking that does not result in mortality or serious injury. To ensure that there can be no misunderstanding, line 24 might be changed to read something like --

"SEC. 118. MORTALITY AND SERIOUS INJURY OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS."

Page 6, lines 22-25: As presently drafted, this paragraph can be interpreted to mean that this section shall govern the taking of sea otters incidental to commercial fishing in California, except for otters in the translocation zone around San Nicolas Island. Unless this is the intent, such a possible interpretation could be avoided by altering line 23 to read "...mammals from the California population of sea otters to...."

Page 7, lines 3-21 (Scientific Consultation): As presently drafted, it appears that the intent of this section is to ensure that the Secretary obtain expert advice in implementing proposed actions. That is, this section does not appear to encourage or

5

direct the Secretary to seek expert advice to assist in determining what should be included in the incidental taking program and what actions should be taken to implement the program. If this is the intent, this section might more logically be placed later in the text -- e.g., somewhere in paragraph (d). If this is not the intent, it might be useful to insert the words "developing and" before the word "implementing" in line 3 on page 7, and to insert the words "necessary or" before the word "proposed" in line 8. Likewise, it might be useful to insert the words "uncertainties and" before the word "studies" in line 12 and in line 15.

Also, subparagraph (3), lines 15-17, might be clearer if it were revised to read something like --

"(3) uncertainties and studies needed to resolve uncertainties regarding the species, numbers, ages, gender, and reproductive status of marine mammals being killed or seriously injured incidental to various commercial fishing operations;"

Pages 7-8, subsection (c) (Stock Assessments): As drafted, this provision would require the preparation of a stock assessment for "each marine stock which occurs in waters under the jurisdiction of the United States" whether or not the stock is subject to taking incidental to commercial fisheries. While there may only be a few stocks not subject to incidental taking by commercial fisheries, preparation of assessments for such stocks may not be the best use of agency resources. As such, Congress may want to limit the requirement to prepare stock assessments to those stocks subject to incidental taking by commercial fisheries.

Page 8, subpar. (B): The difference between "population abundance" and "realistic minimum population size" is not self-evident. Further, the stock assessment presumably should include estimates of both the current and maximum population growth rates. Therefore, this paragraph might usefully be revised to read something like --

"(B) The best available estimates of the stock's realistic minimum population size, current population trend, and current and maximum net production rate;"

Page 8, lines 8-11 (subpar. C): This is one of the provisions that references "lethal take" but does not reference "serious injury." Likewise, it refers to factors that may impede recovery, but does not refer to factors that may be causing declines which may lead to listing the affected species or population stock as endangered or threatened under the Endangered Species Act or depleted under the Marine Mammal Protection Act. Unless this is intentional, it would be useful to revise this

paragraph to read something like --

"(C) estimates of the total lethal take, including possible mortality from serious injury, from the stock by source and, for a stock designated under this subsection as a critical stock, other factors that may be causing decline or impeding recovery of the stock..."

Page 8, lines 16-19: The intent of subparagraph (D)(iii) is not self-evident. If the intent is to include in the stock assessment, an assessment of any seasonal or regional differences in incidental take levels or rates, the requirement could be made clearer by deleting subparagraph (iii) and adding a comma and the phrase "by season and area" after the word "fishery" in line 17.

Page 8, lines 20-22 (clause iv): This is another of the provisions that references mortality, but does not reference injury. Assuming that the intent is to require an assessment of the level of mortality and serious injury for some standard unit of fishing effort, the requirement might be indicated more clearly if this clause were revised to read something like the following --

"(iv) the rate of mortality and serious injury caused by the fishery, per standard unit of fishing effort."

Page 8, line 24: It would be useful to insert the words "status is unknown or the" before the word "stock" in this line.

Pages 9-11 (Classification of Stocks): The reason for including so many classes and sub-categories of stocks is not self-evident. Also, in several cases, the definitions do not appear to reflect generally accepted biological concepts. For example, it would be conceptually impossible to have a Class 2 (II) stock -- i.e., a stock which is stable when the total annual lethal take exceeds production at the maximum net productivity level. Likewise, it would be conceptually impossible to have a Class 3 (III) stock -- i.e., a stock that is increasing when the total annual lethal take exceeds annual production at the maximum net productivity level. Further, a Class 3 (I) stock conceptually could occur only if the carrying capacity of the stock's habitat is declining -- i.e., if the total annual lethal take is less than 20 percent of the production at the stock's maximum net productivity level, the population conceptually would be increasing unless carrying capacity has been reduced.

The basic intent of this section presumably is to ensure that priority is afforded to situations where incidental taking, by itself and in combination with other sources of non-natural mortality, is or may be adversely affecting a particular species or population stock. This point might be made more clearly by --

1. defining the term "critical stock" to mean "a species or population stock (A) which is below its maximum net productivity level and not likely to rebuild to that level without significant delay if action is not taken to reduce human-caused mortality and injury [or habitat destruction]; (B) which currently is above, but is likely to be reduced below, its maximum net productivity level if action is not taken to reduce human-caused mortality and injury [or habitat destruction]; or (C) whose status is unknown or uncertain, but the known level of human-caused mortality and injury is such that, based upon knowledge of comparable species or stocks, it could be causing the species or stock to be reduced or maintained below its maximum net productivity level;
2. directing that priority be afforded sequentially to stocks where the estimated realistic minimum population size is less than 10,000 individuals, between 10,000 and 100,000 individuals, and more than 100,000 individuals.

Page 12 (par. 2): Although it may be possible for the National Marine Fisheries Service to draft the required stock assessment reports within 240 days, it may well be impossible to have all of the draft reports reviewed by, and revised to take account of comments from, relevant scientific experts within 240 days. If this is the case, it might be preferable to direct that the National Marine Fisheries Service (1) classify all marine mammal stocks that occur in U.S. waters according to the degree that they are being, or may be, impacted by mortality and injury incidental to commercial fishing operations; and (2) prepare draft stock assessment reports, after seeking advice from the experts described in sub-section (b), and make the draft reports available for public review and comment within the following periods after the date of enactment of this section -- (a) 240 days for stocks that are being, or that may be being, reduced or maintained below their maximum net productivity level, in whole or in part, as a result of mortality or injury incidental to commercial fishing operations; (b) 360 days for stocks where the incidental take level is greater than one percent of the realistic minimum population estimate, but is not causing the species or population stock to be reduced or maintained below its maximum net productivity level; and (c) within 480 days for all other stocks.

Page 12, line 11: The word "of" appears extraneous and probably should be deleted.

Page 12, lines 13-14: Under this provision, the Secretary would be required to publish the final stock assessments in the

8

Federal Register. The purpose of this requirement is not clear. Taking into account the number of stock assessments to be prepared, the likely length of each assessment, and the cost involved in publication, it may make more sense to require the publication of a notice of availability inviting interested persons to request copies of the assessments.

Page 13, lines 1-3: This sentence indicates that the Secretary shall revise the stock assessments reports if the required review "indicates revision is necessary." It might be useful to provide more guidance (e.g., replace the words "revision is necessary" with something like -- "that the status of the population has changed, or can be defined more clearly."

Page 13, lines 4-7: As drafted, this sentence appears to require development and implementation of incidental taking plans only in cases where such plans would assist recovery of critical stocks that interact with commercial fisheries. It apparently would not require development of incidental taking plans for stocks that are not yet depleted, but are declining as a result of incidental taking. Unless this is the intent, it would be useful to insert the words "prevent depletion or" before the word "assist" in line 5.

Page 13, line 13: The words "plans for" presumably should be inserted before the word "Class" in this line.

Page 13, lines 23 and 24 and Page 14, lines 1 and 2: As drafted, this provision would require that incidental taking plans include information only on the number of individuals being killed or seriously injured incidental to commercial fishing operations. It would not require information on other non-natural sources of mortality and injury. Consequently, persons reading the plans would be unable to determine the impacts of incidental taking in commercial fisheries compared to other sources of mortality and injury. To avoid such a possibility, it would be desirable to add something like "and other sources" after the word "activities" in line 2 on page 14.

Page 14, lines 3-10: This provision appears to mean that, if a species or population stock is being reduced only in part due to incidental take in commercial fisheries, the level of incidental take in commercial fisheries can be reduced, by regulation, only in proportion to its contribution to total mortality and injury. For example, if taking of Steller sea lions, harbor seals, sea otters or other species by Alaska Natives for subsistence purposes exceeds the "calculated acceptable removal level", the fisheries take could not be reduced unless the Native subsistence take were also reduced. If this is the intent, it should be made clear in the report language that accompanies the legislation. If this is not the intent, the provision should be revised.

Page 14, lines 15-21: It is not clear what is meant by the term "within six months after commencement of fishing." Also, unless the intent is to require proportional reductions in all sources of mortality if total take exceeds the calculated allowable removal level, the last phrase in this provision should be deleted or revised.

Page 15, line 7: This is one of the provisions that references lethal taking, but does not reference serious injury. Unless this is intentional, the provision probably should be revised.

Page 15, lines 9-13: It is not clear what is meant by the references in this provision to "regions." If incidental take teams are to be established on a stock-by-stock basis, there is no obvious reason for referencing "regions." Thus, this provision might be clearer if it were revised to read something like --

"(B) The Secretary may charge an incidental take team to deal with multiple stocks, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection."

Page 15, lines 21-24: The desirability of having an equitable balance among representatives of resource user interests and non-user interests is self-evident. It is not self-evident why government representatives should be factored into the balancing. The sentence beginning "[i]ncidental take teams..." would make more sense if it was revised to read something like -- "[i]ncidental take teams shall include experts from all relevant disciplines and, to the maximum extent practicable, include an equitable balance among representatives of resource user interests and public interest groups."

Page 16, lines 7-11 (subpar. E): This provision does not appear fully consistent with provision (d)(1) on page 13.

Page 17, lines 14 and 15: In some cases, it may be useful for the incidental take teams to meet more frequently than every six months. In other cases, there may be no need to meet every six months. Thus, it might be useful to insert something like the following after the word "months" in line 15 -- "or at such other intervals as the Secretary deems necessary."

Page 19, line 2: For the reason noted earlier, it might be useful to insert something like the following after the word "basis" in this line -- "or at such other intervals that the Secretary deems necessary."

Page 19, lines 11-24 (par. 7): It is not self-evident what is meant by the term "having an immediate and significant adverse

10

impact." Also, this provision, as drafted, seems to indicate that socio-economic considerations should be given priority, even when taking incidental to fishing operations could be further reducing a depleted stock to a level where listing under the Endangered Species Act is warranted. It indicates, for example, that the Secretary may, but is not required to, prescribe emergency regulations, and may prescribe such regulations only after consultation with appropriate Regional Fishery Management Councils and state fishery managers and only to "the maximum extent practicable" taking "into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals." The provision would make more sense if it were revised to read something like --

"(7) If the Secretary finds, prior to the issuance of a final incidental taking plan, that the incidental taking of marine mammals in a commercial fishery may be causing a species or population stock to be reduced to a point where it would be a candidate for listing under the Endangered Species Act, the Secretary shall prescribe emergency regulations to immediately reduce such incidental taking to the level necessary to prevent further decline. In prescribing such emergency regulations, the Secretary, as possible, shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals, and shall conform such regulations, as practicable, with existing state or regional fishery management plans."

Page 20, lines 3-6 (par. B): It is not clear what is meant by the term "the applicable fishing season." If there is more than one fishing season in a year, this provision could require separate promulgation of emergency regulations for each season. To avoid such a possibility, the phrase "or until the end of the applicable fishing season, whichever is earlier" should be revised or deleted.

Page 20, lines 15-18 (subpar. B): The intent of this provision is not self-evident. It implies that incidental take plans could be modified at the request of Regional Fishery Management Councils, state agencies, and tribal authorities, but that plans could not be modified at the request of other entities -- for example, the Fish and Wildlife Service.

Page 21, line 1: The term "alternative gear techniques" might make more sense if it were changed to read something like -- "alternative fishing gear or techniques."

Page 21, lines 4-7 (subpar. D): This is another case where reference is made to lethal taking, but not to serious injury.

11

Also, the explicit reference to "critical stocks" may be interpreted to mean that the Secretary should not promulgate regulations providing for workshops or other means to advise fishermen of the importance of reducing taking from non-critical stocks.

Page 21, lines 8-10 (subpar. E): This provision might usefully be expanded by adding after the words "monitor the level" something like "and the effectiveness of measures taken to reduce the level."

Page 21, lines 11-15 (Registration of Vessels): It is not self-evident what is meant by the term "understand the interaction between commercial fisheries and marine mammal stocks." Also, it is not clear why the phrase "in a region" is included. Assuming that the intent is to authorize the Secretary to develop a mandatory registration system when mandatory registration and reporting are necessary to obtain information needed to accurately assess and monitor the level of incidental take in a particular fishery, the intent could be made clearer if this section were revised to read something like --

"(f) REGISTRATION OF VESSELS. -- (1) Subject to the provisions of this section, the Secretary shall develop a mandatory fishing vessel registration system, when such registration is the best practicable means for obtaining information necessary to reliably assess and monitor the level of marine mammal mortality and injury incidental to a particular commercial fishery."

Page 21, line 17: The words "rely upon" might usefully be changed to "utilize to the extent practicable...."

Page 21, line 18: The conjunction "or" probably should be changed to "and." Also, the formulation of this section can be interpreted to limit the kinds of information that the Secretary may require as part of a vessel registration program. If this is not the intent, it might be useful to revise the phrase that begins on line 18 with the words "which provide" to read something like "which provide information necessary to reliably quantify and monitor fishing effort and catch of both target and non-target species, by vessel type, gear type, and area, including:" If the intent is to limit or proscribe the kinds of information that can be required as part of a vessel registration program, subparagraphs (B) and (F) should be revised to read something like --

"(B) The identity and operational characteristics of specific vessels to be registered.

....

12

"(F) The types and amounts of fishing gear carried and used, and the appropriate unit of fishing effort."

Page 22, lines 5-8: In order for the incidental take teams to reasonably advise the Secretary as to whether existing Federal, state, or tribal data bases might be utilized, the teams would have to identify and assess the existing data bases. Therefore, it might be useful to insert the words "identify, assess and" before the word "advise" in line 5.

Page 22, line 13: The reference in this line to "the information set forth in paragraph (2)" suggests that paragraph (2) is intended to proscribe or limit the kinds of information that the Secretary may require through a mandatory vessel registration system. Unless this is the intent, the words "set forth in paragraph (2)" should be revised to read something like --- "necessary to reliably quantify and monitor fishing effort and the level of incidental take of marine mammals by vessel type, gear type, and area."

Page 23, lines 5-7: Requiring that the cost of maintaining a separate registry system "be covered through Federal appropriations" appears to be a Federal subsidy for the fishing industry. The rationale for this subsidy might usefully be explained in the report which will accompany the legislation.

Page 23, lines 15 and 16: It might be useful to clarify what is meant by the term "at the end of each fishing trip." This could be done in the report language which accompanies the legislation, or by changing the phrase "at the end of each fishing trip" to read something like "within 48 hours following the end of each fishing trip."

Page 23, line 21: The word "registered" probably could be deleted.

Page 23, line 22: It would be desirable to have the name and address of both the vessel owner and the vessel operator. Thus the conjunction "or" on line 22 might usefully be changed to "and."

Page 23, line 24: It is not self-evident what is meant by the term "the name and description of the fishery."

Page 24, lines 1-3 and 5-6: As drafted, lines 1-3 could be interpreted to mean that fishermen are required to report the species, but not the number, of marine mammals taken incidentally during commercial fishing operations. Such an interpretation could be avoided and paragraph (6) could be deleted by revising paragraph (4) to read --

"(4) The species, number and, as possible, size, sex, and

13

reproductive status of marine mammals incidentally killed or seriously injured, and the date, time, and approximate geographic location of such incidental taking."

Page 24, lines 7-14: As drafted, this section indicates that the Secretary may establish, but is not required to establish, a vessel observer program. It is clear from the interim exemption program that, in many fisheries, it will not be possible to reliably assess or monitor the level of incidental take without an independent observer program. Therefore, the word "may" in line 7 should be changed to "shall." Further, it would be useful to change the word "monitoring" in line 10 to "observer." Also, the intent of the observer program could be clarified by revising the phrase beginning after the word "and" in line 12 to read "to determine the nature and extent of possible bias (errors) in incidental take data reported by fishermen as required under sub-section (g), and to more accurately assess and monitor the level of mortality and serious injury, particularly of critical stocks, incidental to commercial fisheries."

Page 24, lines 16 and 17: It might be useful to expand this provision to read "(B) recording the number of marine mammals sighted during the observation period and the behavior of marine mammals observed in the vicinity of the fishing gear;"

Page 24, lines 18 and 19: Unless the intent is to limit the kinds of information that observers can collect, it would be useful to make "collection of marine mammal tissues" a separate item and to revise subparagraph (C) to read something like "related scientific investigations, including assessments of when and how marine mammals are caught in fishing gear, and how such incidental taking might be avoided or reduced."

Page 24, lines 22-24: The penalty for refusing to carry an observer would be a civil penalty not to exceed \$5,000. While avoiding such a penalty may be a sufficient incentive in most cases to compel a vessel owner or operator to carry an observer, in some cases it may not be. Stricter penalties, including suspension of fishing privileges, should be available for repeat violators.

Page 25, lines 1-5: The intent of this provision presumably is to give the Secretary authority to establish programs, in addition to the onboard observer program, to obtain information necessary to accurately assess and monitor levels of incidental take in various fisheries. This point could be made more clearly by changing this paragraph to read something like --

"(3)(A) The Secretary shall establish, as necessary, alternative observation programs to achieve the objectives of this paragraph which may include, but not be limited to,

14

direct observation of fishing activities from vessels, airplanes, video recorders, or points on shore."

Page 25, lines 6-8: This provision can be interpreted to mean that individuals engaged in the various observation programs can collect only the types of "scientific information" specified in paragraph (3). If this is the intent, it should be explained in the report accompanying the legislation. If it is not the intent, this provision should be deleted or revised.

Page 25, lines 9-11: Requiring that the monitoring (observer) program be funded by Federal appropriations appears to be a Federal subsidy for the fishing industry. The rationale for this should be explained in the report that accompanies the legislation.

Page 25, lines 12-16: This provision can be interpreted to mean that priority should be afforded to endangered or threatened species, even if the level of incidental taking is not significantly affecting recovery of the species or stock. Such an interpretation could be avoided by inserting something like the following after the word "from" on page 14 -- ", and may be causing declines or significantly slowing recovery of...."

Page 26, line 1: This line might usefully be changed to read -- "obtain additional information on the nature or extent of interactions with...."

Page 26, line 7: The words "estimate or" could usefully be inserted before the word "verify."

Page 26, line 15: The words "commercial fishing vessels" presumably should be "marine mammals."

Page 26, line 17: The conjunction "or" probably should be changed to "and."

Page 26, line 25: The second "rates" in this line presumably should be changed to "levels."

Page 27, lines 4 and 5: It might be useful to specify that the report of the review be provided to Congress within four years after enactment of this legislation, rather than "within one year after commencement of the review."

Page 27, lines 5-7: The sentence that begins "[t]he Secretary shall..." might usefully be revised to read something like -- "[t]he Secretary shall note any marine mammal stock for which the status, trend, or level of incidental take in commercial fisheries remains unknown or uncertain, and any fishery for which there is not a reasonable estimate of the incidental mortality and serious injury of marine mammals."

15

Page 27, lines 15-22: This subsection would set a maximum civil penalty of \$5,000 for violations of section 118. It is not apparent why violations of this section should be regarded as less severe than violations of other provisions of the Act. This might usefully be discussed in the legislative report to accompany the bill. Further, it is not clear how certain violations might be characterized. For instance, would the unauthorized taking of a marine mammal incidental to commercial fishing be treated as a violation of section 102 or section 118? This should be clarified.

Page 28, line 7: The reference to subsection (f)(4) seems incorrect. Subsection (g) or (g)(4) would be more appropriate.

Page 28, lines 1-3: This provision would apply to owners or operators of vessels engaged in a fishery that has a "remote likelihood of or no known incidental taking of marine mammals...." There does not, however, appear to be a mechanism for identifying such fisheries and/or such vessels. As such, it is uncertain how determinations will be made regarding the applicability of this provision.

Page 28, line 15: The words "estimated maximum" presumably should be inserted before the word "net" in this line.

Page 28, line 16: The reference to "a recovery factor" in this line might usefully be changed to "the appropriate recovery factor." Also, the legislative report to accompany the bill might usefully provide additional guidance on what appropriate recovery factors might be.

Page 29, lines 18-21 (Definition of the Term "Recovery Factor"): As drafted, this definition could be interpreted to mean that any recovery factor that allows a depleted population to grow, no matter how slowly, would satisfy this legislation. If this is the intent, it should be explained in the report to accompany the legislation. If it is not the intent, the definition should be revised accordingly -- e.g., by adding a phrase, such as "without significant delay" after the word "population" in line 21.

Page 30, line 24: It might be useful to insert the words "NON-LETHALLY" before the word "DETER" in this line.

Page 31, lines 7-9: As drafted, this provision would allow any person to deter marine mammals from damaging the gear or catch of a commercial or recreational fishermen or from damaging private or public property regardless of whether that person had any proprietary interest in the gear, catch, or property. To prevent possible abuse of this broad taking authority, this section should be revised to allow deterrence only when the gear, catch, or property belongs to the taker or the taker's employer.

16

Page 31, lines 11 and 12: It would be desirable to add something like the following at the end of line 12 -- ", or abandonment of traditional feeding, breeding, or resting areas."

Page 31, lines 17-19: This provision appears to assume that simple disturbance or harassment of a marine mammal, including highly endangered species like the Hawaiian monk seal and the Florida manatee, will not affect the survival or productivity of the species or stock. This assumption is not valid. For example, available information clearly indicates that simple disturbance can cause Hawaiian monk seals to abandon traditional pupping and haul-out sites, and cause increased mortality. At the very least, the words "but not listed as endangered or threatened under the Endangered Species Act" should be inserted after the word "Act" in line 19.

Page 32, lines 1-5 (The Transition Rule): As presently drafted, this transition rule apparently could allow indefinite continuation of the generally unlimited taking authorized by the interim exemption. To avoid such a possibility, it might be useful to alter the proposed revision of section 114(a)(1) to read something like -- "until 1 April 1996 or until superseded by regulations prescribed under section 118, whichever comes first."

In addition, the relationship between this provision and proposed section 101(a)(4) is unclear. The bill, or the legislative report, should clearly indicate whether proposed section 101(a)(4) will immediately apply to endangered and threatened marine mammals, whether section 114 will apply, or both.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

SPECIAL

February 24, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2100

TO: Legislative Liaison Officer -

AGRIC-CR - Vince Ancell (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
ENERGY - Bob Rabben - (202)586-6718 - 209
HHS - Frances White - (202)690-7760 - 328
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Danny Conenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Erik Lichtenberg - 470
EPA - Thomas C. Roberts - (202)260-5414 - 326
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Sonya Matthews - (202)456-6722 - 429
OSTP - Chris Clary - (202)456-7116 - 288
SBA - Christine Swedin - (202)205-6702 - 315

FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Pam BARR (395-5852)

SUBJECT: VA Proposed Report RE: S 1547, Safe Drinking
Water Act Amendments of 1993

DEADLINE: 10:00 AM March 2, 1994

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

A. Fraas
P. Kuhn
T. Grams
S. Redburn

*T. Lindseth/K.
McGinty*
C. Walden/B. Burke

3pgs



**THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON**

#2100

The Honorable Max Baucus
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Veterans Affairs (VA) is offering the following comment on S.1547, the Safe Drinking Water Act Amendments of 1993. In addition to revising the Safe Drinking Water Act, this bill proposes a new approach to the problem of radon in drinking water. We believe that certain provisions of the bill relating to radon may derogatorily impact some prospective home buyers.

Section 8 of the bill mandates that the Toxic Substances Control Act (15 U.S.C. § 2661 et. seq.) be amended by adding Section 312 entitled, "Radon Testing at Time of Home Sale." Section 312 provides that no Federal agency could guaranty a home loan in areas identified by the U.S. Environmental Protection Agency (EPA) as high-risk radon areas unless the purchaser had been provided with radon test results for the property and health risk information related to radon. Our interpretation of the bill's definition of Federal agencies whose loans would be covered by this prohibition, include not only loans by the VA, but also loans by other Federal Departments, such as the Department of Housing and Urban Development (FHA loans), and loans purchased or pooled by Fannie Mae and Freddie Mac.

Although the dissemination of radon test results and health related risks may be desirable, the timing of the disclosure is problematic. Pursuant to the bill's mandate that prospective home buyers be notified of the radon test results "not later than 10 days prior to the date of purchase," these results, in most cases, would be provided to the buyer after the purchase agreement had been signed. If the home buyer is faced with test results showing unacceptable levels of radon, pursuant to the bill's provisions as presently drafted, the home buyer may not have a legal right to amend the contract terms or back out of the contract without forfeiture of deposit monies.

We recommend that the provisions of this bill be modified to address this problem. Either the radon information should be provided to the home buyer prior to signing of the purchase agreement, or if provided afterwards, the home buyer should be guaranteed correction of unacceptable radon levels or the right to void the purchase agreement.



Putting Veterans First